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DEPARTMENT OF STATE

PROCEEDINGS

OF THE

International
Boundary Commission

UNITED STATES AND
MEXICO

DIVERSION OF RIO GRANDE BY
AMERICAN RIO GRANDE
LAND AND IRRIGA-
TION COMPANY

United States of America et
al.,

Complainants,

versus

American Rio Grande Land
and Irrigation Company,

Defendant.

Suit in

Equity No. 41.

DECREE AWARDING DAMAGES
TO COMPLAINANTS

(PUBLISHED BY AMERICAN SECTION)



DEPARTMENT OF STATE

PROCEEDINGS

OF THE

International Boundary Commission

UNITED STATES AND
MEXICO

Relating to the
Diversion of Rio Grande by American
Rio Grande Land and Irrigation
Company near Horcon
Ranch, Tamaulipas,
Mexico.

BRIG. GEN. ANSON MILLS,
U. S. Army (Retired),
American Commissioner.

FERNANDO BELTRÁN Y PUGA,
Comisionado Mexicano.

W. W. FOLLETT,
Consulting Engineer.

E. ZAYAS,
Ingeniero Consultor.

WILBUR KEBLINGER,
Secretary.

M. N. VELARDE,
Secretario.

NO. 10
JULY 1913



BROWNSVILLE, TEXAS, *October 24, 1906.*

THE HONORABLE, THE SECRETARY OF STATE:

SIR: I have the honor to enclose herewith Joint Journal of this Commission, in Spanish and English, in the case presented by the Mexican Commissioner known as the "Horcon Ranch Case."

This case was also brought to the attention of the Department by the Mexican Embassy and was referred to me in the Department's letter of October 12, 1906.

Our investigation has disclosed the fact that the American Rio Grande Land and Irrigation Company some time last Spring became aware of a threatened banco cut-off in the Rio Grande on Mexican soil, which cut-off would take the channel of the river away from the site selected by them for a pumping station, and they made endeavors extending over a period of three months, assisted by the Mexican owners, to prevent this cut-off, but finally became convinced that it was impossible to stop the erosion of the soft soil, and knowing that their works would be removed from the channel of the river and a sufficient supply of water for their pumping plant they determined in the early part of June to resort to the opening of another cut-off, by artificial means, below their pumping works, being perfectly aware that this latter artificial cut-off would carry the erosive current away from the point where the natural cut-off would in a short time be fully accomplished if no action was taken. As soon as the Mexican authorities were apprised of this work they sought in several ways to prevent or restrain it, and the Mexican Consul in Brownsville on July 1, 1906, addressed a communication to Mr. Silver, as President (he is really the General Manager) of the company, warning him that the work was in violation of the Treaty, a copy of which is submitted with the proceedings. Later on Mr. Mendiola, as engineer of the Department of Public Works of Mexico, visited the location and reported of what was being done to his Government, when the Secretary of Foreign Relations requested the Mexican Commissioner, Mr. Puga, to call a meeting of the Joint Commission to take up the case.

The American Commissioner was notified on July 9th and he im-

mediately sent his Consulting Engineer, together with the Mexican Consulting Engineer, to the place to make an examination and report. The Joint Engineers reported that the work had so far progressed that it was then beyond control, especially as the unprecedented high water in the river had entirely surrounded the works and no suitable detailed examination could be made until the water receded. Thereupon the Commissioners postponed the meeting until October 17th, when it assembled in this city.

The Commissioners visited the locality, examined it thoroughly and aside from the evidence in the record there was conclusive proof of all that had been done.

This is a novel case and is without precedent in the workings of the Commission and has presented many embarrassments to both Commissioners, for while there was no question but that the Irrigation Company had committed an act in direct violation of the Treaty there was a great doubt in the minds of both Commissioners as to what remedy could be applied under the treaties under which we are working, and both hesitated to enunciate any judgment against the irrigation company until we were advised as to our authority in the premises, knowing that it would not only be futile to give a judgment that could not be executed, but that such a judgment unexecuted would be an encouragement to other wrongdoers.

The Joint Commission had in some respects a parallel case in that known as the "Protest of the Citizens of El Paso, Texas, and Juarez, Chihuahua, Mexico, against Unduly Projecting Jetties," opposite those cities. The case was a long and perplexing one and is treated of in our printed report (Proceedings of the International (Water) Boundary Commission, United States and Mexico, pages 149 to 167, inclusive). In this case the Joint Commission gave judgment of the works in the river opposite El Paso as unduly projecting in the river in violation of treaty and ordered their removal. Our decision was considered by both Governments and after a lengthy correspondence the Mexican Secretary of Foreign Relations directed the removal of the condemned works. This appears to be a parallel case, illustrating our authority to order restitution, save that in this case the obstruction was placed by an official of the Mexican Government: in fact it was a public work of Mexico. In the present case of the "Horton Ranch" the wrong has been committed by a private corporation, chartered, we understand, by the State of Texas, and we hesitate to

enter any judgment against them, either for indemnity for the injury done to private individuals or the two Governments for causing a change in the river designated as the international boundary, fearing, as has been stated, that we would be unable to execute judgment, and we have therefore submitted the matter for full information as to the scope of our authority and jurisdiction under present treaties between the two countries.*

It may not be improper for me to state here that it will be difficult to determine what restitution or example should be made in this case. The Mexican Commissioner suggested that they be required to return the river to its old channel, and this, if practicable, would probably be the best course to pursue, but in my judgment, and in the judgment of the Consulting Engineer, this would not be reasonably practicable, as depending on circumstances of the rise and fall of the river and the shifting character of the soil; and besides, it would cost several hundred thousands of dollars to restore the river to its former bed, if feasible.

Several photographs of the locality will be forwarded in a few days to be attached to the proceedings.

My address will be El Paso, Texas, until the 5th of November, after which I will advise you.

I have the honor to be, Sir, very respectfully,

Your obedient servant,

ANSON MILLS,
Brigadier General, U. S. Army, retired, Commissioner.

*See pages 21-22.

(Telegram) (Translation.)

EL PASO, TEXAS, July 9, 1906.

BRIGADIER GENERAL ANSON MILLS,
U. S. BOUNDARY COMMISSION,
Washington, D. C.

Secretary Foreign Affairs informs me today in brief: Proprietor of Ranch Horcon 44 kilometers above Matamoros complains that Rio Grande Irrigation Company is making large cut diverting river and menacing ranch. Inspector Mendiola officially confirms as making immediate case for Boundary Commission, which I present by means of this message. Please reply promptly.

FERNANDO BELTRÁN Y PUGA,
Mexican Commissioner.

(Telegram.)

WASHINGTON, D. C., July 10, 1906.

U. S. COLLECTOR OF CUSTOMS,
Brownsville, Texas.

The Mexican Government complains through Captain Mendiola and their Secretary of State that the Rio Grande Irrigation Company is making large cut in river opposite Horcon Ranch, thirty miles above Brownsville, diverting river and menacing Mexican territory and requesting immediate action by commission. Can you secure reliable information as to nature of this work and whether it probably really menaces the Mexican bank and answer today; collect Government rate.

ANSON MILLS,
Commissioner.

(Telegram.)

BROWNSVILLE, TEXAS, July 10, 1906.

BOUNDARY COMMISSION,
Washington, D. C.

Manager* Rio Grande Irrigation Company states they are not diverting river and menacing Mexican Territory but are building a levee to keep high water off their property.

JOHN W. VANN, *Collector.*

(Telegram.)

WASHINGTON, D. C., July 10, 1906.

MR. FERNANDO BELTRÁN Y PUGA,
Mexican Boundary Commissioner,
El Paso, Texas.

As a precautionary measure I suggest that Consulting Engineers Follett and Zayas proceed at once to the location and examine work and telegraph joint opinion

Mr. S. P. Silver.

to each of us as to the seriousness of complaint and emergency for immediate action by Commission. If they report meeting urgent I will proceed to meet you on the ground immediately on receipt of their report. Two somewhat similar complaints heretofore made: One by citizens of Reynosa, opposite Hidalgo, which was not sustained, and another at Columbia, near Laredo, opposite coal mine, which was found to be quite insignificant. If this is at all similar, as we have very little money this year, and as we are obliged to proceed to the lower river within a few months, postponement seems desirable unless great interests would be compromised. If you concur in above recommendation telegraph me and I will direct Mr. Follett to proceed at once.

ANSON MILLS,
Commissioner.

(Telegram.) (Translation.)

EL PASO, TEXAS, July 10, 1906.

BRIGADIER GENERAL ANSON MILLS,
U. S. Boundary Commissioner,
Washington, D. C.

I accept provisionally your idea. I am deliberating now about it since article four of the convention is very concise in this. I request you to order Mr. Follett to see me before going. I am ignorant of his residence. Zayas was changing to San Antonio and I telegraphed him of our decision.

FERNANDO BELTRÁN Y PUGA,
Mexican Commissioner.

(Telegram.)

BROWNSVILLE, TEXAS, July 15, 1906.

BRIGADIER GENERAL ANSON MILLS,
U. S. Commissioner,
International Boundary Commission,
Washington, D. C.

We make the following report to the Joint Commissioners:

Owing to the river being at high water mark, we had difficulty in reaching the work of the American Rio Grande Land and Irrigation Company located on Sheets twenty-four and twenty-five of Commission maps and complained of by owners of Horcon Ranch. After making as complete an examination of the work as the high water permitted we are of the opinion that although said work is of considerable importance, the situation is not sufficiently threatening and urgent as to demand immediate action by the Commission, but that the interests affected by said work will not suffer by delaying action until the condition of the river in October or later, during low water, will permit complete examination. The cut-off which caused the complaint is already made and nothing can now be done to stop the water.

W. W. FOLLETT,
E. ZAYAS,
Consulting Engineers.

October 12, 1906.

BRIGADIER GENERAL ANSON MILLS,
U. S. Commissioner,

United States and Mexican (Water) Boundary Commission,
Washington, D. C.

SIR: Referring to your letter of the 24th ultimo and to previous correspondence relative to a canal cut by the Rio Grande Irrigation Company and the overflow of the Horcon Ranch, I have the honor to enclose herewith, for the Commission's consideration of the case, when it shall meet on October 15th, copies of the papers listed below.

I am, sir,

Your obedient servant,

ELIHU ROOT.

Enclosures:

From Mexican Embassy, September 10, 1906.

From Interior Department, October 9, 1906.*

(Translation.)

EMBASSY OF MEXICO TO THE UNITED STATES OF AMERICA.

WASHINGTON, *September 10, 1906.*

HONORABLE SIR: By special direction of my Government I have the honor to inform you that, as shown in the memorial appended to this note, the residents of the Horcon Ranch are complaining of the damage done to their corn and cotton fields by the overflow of the Rio Grande caused by the canal works carried on by the "Rio Grande Irrigation Co."

My Government further instructs me to call on your good offices to the end that action be taken by the proper authorities to cause the said company to close the intake of the canal, to prevent greater difficulties, until the Mixed Commission can meet for the investigation and settlement of the question of diversion of the river through the opening of the said canal, without prejudice to the rights of the parties aggrieved.

I take pleasure in renewing to you, Honorable Sir, the assurances of my very high consideration.

BALBINO DAVALOS.

*Omitted.

(JOINT JOURNAL.)

BROWNSVILLE, TEXAS,
October 18, 1906.

Re—Diversion of Rio Grande by American Rio Grande Land and Irrigation Company, near Horcon Ranch, Tamaulipas, Mexico.

The Joint Commission met at 12 m. The Mexican Commissioner presented the following communication from the Department of Foreign Relations of Mexico:

"MEXICO CITY, July 3, 1906.

"The Department of Communications in a note, No. 5, of the 2d instant, advises this Department as follows:

"On the 30th ultimo Engineer Manuel Mendiola advises this Department by telegraph as follows: "I have the honor to advise that, complying with my instructions, Mr. Perciviche went to inspect the work of the American Company opposite Horcon Ranch, situated forty-three kilometers above Matamoros, and informs me by telegraph that 'Opposite Horcon Ranch, going up river, the Rio Grande has a bend towards Mexico, followed by another towards Texas. In the first bend the Rio Grande Irrigation Co. has constructed on the American side a cut in order to change the course of the Rio Grande at this place and continuing deepening it, the cut being now 25 metres wide, 5 metres deep and 570 metres long. The cut connecting these bends, if the water continues to rise, will produce the change of the course of the Rio Grande at this place, leaving the bend cut off towards the Mexican side, and the current will destroy the right bank of the river on the Horcon land. In the other bend above mentioned there is only 35 metres of land left for the Rio Grande to cut it towards Texas by the natural avulsion of the current.'"

"Which I have the honor to transmit to you for your information, to the end that proper action may be taken, advising you that this Department has telegraphed Engineer Mendiola instructing him to go at once personally to the place, make an inspection and report immediately all the details, and at his convenience to meet with the Chief of the Boundary Commission in order to arrange with him the necessary data to be taken at the place where the work has been done.

"I advise you of this matter in order that there may be an immediate meeting

BROWNSVILLE, TEXAS,
Octubre 18 de 1906.

La Comisión Mixta se reunió á las 12 M.

El Comisionado Mexicano presentó la siguiente comunicación de la Secretaría de Relaciones Exteriores de México:

"México, Julio 3 de 1906.

"La Secretaría de Comunicaciones en oficio número 5, de 2 del actual, me dice lo que sigue:

"El Ingeniero Manuel Mendiola dice á esta Secretaría por telegrafo, con fecha 30 del pasado:

"Tengo el honor de comunicar á usted que, cumpliendo con mis instrucciones, Perciviche pasó á inspeccionar trabajos Compañía Americana frente rancho Horcón, que está á cuarenta y tres Kilómetros arriba de Matamoros y me informa esta vía lo siguiente: Frente rancho Horcón río arriba tiene Bravo una vuelta saliente hacia México y luego otra dirigida á Texas. En la primera está ya construido lado americano por "Rio Grande Irrigation Company" para desviar curso Bravo por este lugar y lo continúa profundizando un tajo veinticinco metros ancho cinco hondo y quinientos setenta largo. Comunicando recodos dicha curva resultando que si sigue subiendo cambiará curso Bravo por ese lugar quedando cortada hacia México esa curva y corrientes destruirán entonces márgen derecha terrenos Horcón. En la otra curva arriba mencionada faltan treinta y cinco metros para que Bravo la corte Texas por avulsión natural corriente."

"Lo que tengo el honor de transcribir á usted para su conocimiento y fines á que haya lugar, manifestándole que ya se telegrafía al Señor Ingeniero Mendiola ordenándole pase personalmente desde luego á inspeccionar el lugar de que se trata é informe con todo detalle sobre el particular á la mayor brevedad y tal vez convendría que se pusiera de acuerdo con el Jefe de la Comisión de Límites para que se precisaran los datos necesarios que deban tomarse en el lugar en que se hacen las obras."

"Lo que traslado á usted á fin de que á la mayor brevedad promueva la reunión de la Comisión Mixta, para que se estudie el presente caso y se dicte su resolución."

"Reitero á usted mi consideración."

(Firmado) "MARISCAL."

of the Joint Commission for investigation and report on this case.

"Reiterating again my consideration, etc., etc.

"MARISCAL."

Action by the Joint Commission upon this communication has been delayed until this date owing to the impracticability of examining the ground by reason of the high water in the Rio Grande.

The Commissioners agreed to proceed at once to the site of the Horcon Ranch and make a personal examination of the existing conditions.

The Commission then adjourned.

BROWNSVILLE, TEXAS,
October 20, 1906.

The Joint Commission met at the Federal Building at 10 o'clock a. m.

The Joint Commission, including the Consulting Engineers and Secretaries, and accompanied by Mr. Manuel M. Mendiola, Engineer in the Department of Communications and Public Works of Mexico, spent yesterday visiting and examining the works complained of and the river adjacent.

From observation it was evident that the works complained of in the statement of the case from the Department of Foreign Relations of Mexico and presented to the Commission by the Mexican Commissioner had completely accomplished a cut-off—changing the course of the river.

The cut-off was so absolute that no particle of water was running through the old river bed, its upper end being entirely filled with silt for many feet above the then level of the river.

The Consulting Engineers were requested to make as soon as convenient an approximate sketch map of the locality, based upon former surveys of the Commission, for use in the further proceedings of this case.

The Mexican Commissioner then presented Mr. Manuel M. Mendiola, who, being duly sworn, testified as follows:
Examination by the Mexican Commissioner.

Q. What is your name, where do you reside, and what is your occupation?

A. Manuel M. Mendiola; Civil Engineer in the Department of Communications and Public Works of Mexico, which occupation necessitates my traveling along the northern border of Mexico, having no permanent residence.

Se ha retardado hasta esta fecha la acción de la Comisión Mixta respecto á esta nota, debido á que las altas aguas del Río Bravo habían hecho antes impracticable el examen del terreno.

Los Comisionados convinieron en partir desde luego al Rancho del Horcón para hacer un examen personal de las condiciones actuales, con lo cual se levantó la sesión.

BROWNSVILLE, TEXAS,
Octubre 20 de 1906.

La Comisión Mixta se reunió en el Edificio Federal á las 10 A. M.

La Comisión Mixta, incluyendo á los Ingenieros Consultores y á los Secretarios y acompañada por el Señor Manuel M. Mendiola, Ingeniero del Ministerio de Comunicaciones y Obras Públicas de México, pasó ayer el día visitando y examinando las obras sobre que versa esta queja y el terreno adyacente á ellas.

La observación hizo evidente que las obras denunciadas en la presentación del caso hecha por el Comisionado Mexicano, según instrucciones del Ministerio de Relaciones Exteriores de su país, han determinado por completo un corte que cambia el curso del Río. El cambio ha sido tan completo que ya no corre ni una gota de agua por el cauce antiguo, pues su extremo superior se ha llenado con el azolve hasta varios pies sobre el actual nivel del agua en el río.

Se pidió á los Ingenieros Consultores que lo más pronto posible hicieran un croquis aproximado de la localidad, basado en los primitivos mapas de la Comisión y destinado ha usarse en el sucesivo desarrollo de esta caso.

En seguida el Comisionado Mexicano presentó al Capitán Mendiola quien después de prestar la necesaria protesta rindió su testimonio en la forma siguiente:

Examen por el Comisionado Mexicano.

P. ¿Como se llama usted, donde reside y cuál es su ocupación?

R. Manuel M. Mendiola; Ingeniero Civil del Ministerio de Comunicaciones y Obras Públicas de México, ocupación que requiere que viaje á lo largo de la frontera norte de México, sin residencia permanente.

Q. What was your first knowledge of the work complained of by the owners of the Horcon Ranch?

A. My first information was a telegram from the Department of Public Works ordering me to proceed to the Horcon Ranch and inspect the work done by an American Company on the Texas side, just opposite this ranch. I did not then know the location of the Horcon Ranch and telegraphed my Secretary who informed me of its location and stated that the work complained of was a canal being opened up by Rio Grande Land and Irrigation Company and making a cut-off in the river. I was then ordered to proceed at once to the site of the work and report by telegraph.

Q. About what was the date of your instructions from your Department?

A. They were dated the 2d of July, and I left El Paso, Texas, on July 4, 1906, and reached Horcon Ranch on the 8th of the same month.

Q. According to the information you were able to gather at the Horcon Ranch what was claimed to be the object of this work?

A. The people at the Horcon Ranch informed me that they were told by the men employed on the work that they were only building a levee to protect their own land from overflow.

Q. What was the state of the work when you arrived there?

A. The canal was already cut from one bend in the river to the other and was about 700 metres long, 10 metres wide and 5 metres deep. The water was running through it to the depth of one metre although the river was low.

Q. Did you go there in an official capacity and with instruments?

A. Yes. I had a steel tape and a small hand level.

Q. Did the employees of the American Company notice your presence there?

A. Only the foreman on the work; I did not talk with any of the officials of the Company.

Q. Did you say anything to the foreman regarding the work?

A. No.

Q. Do you believe that the cut-off has caused a change in the condition of the river?

A. Yes.

Q. Do you believe that such a change could have been accomplished in so short a period of time if the Company had stopped the work in July?

P. ¿Cuál fué la primera noticia que tuvo usted de la obra de que se quejan los propietarios del Rancho del Horcón?

R. Mi primera noticia fué un telegrama del Ministerio de Obras Públicas ordenándome me dirigiera al Rancho del Horcón é inspeccionara la obra hecha por una compañía Americana en el lado de Texas y enfrente de ese Rancho. No sabia yo entonces dónde se hallaba el Rancho del Horcón y telegrafíé á mi Secretario quien me informó de su ubicación y me dijo que la obra á que se refería la queja era un canal que estaba abriendo la "Rio Grande Land and Irrigation Company" haciendo un corte en el río. Después se me ordeno marchara desde luego al sitio de la obra y que informara por telégrafo.

P. ¿Hacia qué fecha recibió usted esas instrucciones de su Ministerio?

R. Estaban fechadas el 2 de Julio y salí de El Paso, Texas, el día 4 de Julio de 1906, llegando al Rancho del Horcón el día 8 del mismo mes.

P. ¿Según los informes que pudo usted recoger en el Rancho del Horcón, cuál se pretendía ser el objeto de esta obra?

R. La gente del Horcón me informó que les habían dicho los hombres empleados en ella que sólamente estaban haciendo un bordo para proteger sus terrenos contra las inundaciones.

P. ¿Cuál era el estado de los trabajos cuando usted llegó allí?

R. El canal estaba ya excavado de una vuelta del río á la otra y tenía cerca de 700 metros de largo, 10 de ancho y 5 de profundidad. El agua estaba corriendo por él con una profundidad de un metro, aunque el río estaba bajo.

P. ¿Pué usted allí con carácter oficial y llevando sus instrumentos?

R. Sí. Llevaba una cinta metálica y un nivelito de mano.

P. ¿Notaron la presencia de usted los empleados de la Compañía Americana?

R. Sólo el capataz del trabajo; no hablé con ninguno de los empleados superiores de la Compañía.

P. ¿Dijo usted algo respecto á la obra al capataz?

R. No.

P. Cree usted que el corte ha causado un cambio en la condición del Río?

R. Sí.

P. ¿Cree usted que hubiera podido verificarse semejante cambio en tan corto periodo de tiempo si hubiera suspendido sus obras en Julio la Compañía?

A. I think the action of the river would have accomplished the change without further work.

Q. Did you notice any destruction in the banks of the river on your last trip, the 19th of October?

A. Yes; to a certain extent, in the regular channel of the river connected by the cut-off.

Q. Can you point out on the sketch where such destruction has taken place?

(The Mexican Commissioner then introduced the sketch map, approximately showing the Rio Grande in the vicinity of the Horeon Ranch, as prepared by the Consulting Engineers, and marked "Exhibit A.")*

A. Yes; the destruction is in the bank of the river on the Mexican side at a point opposite the lower end of the cut-off and down the river.

Examination by the American Commissioner.

Q. Did you at any time during your first two visits to the works have any conversation with Mr. Davis who is in charge of the work of the Rio Grande Land and Irrigation Company?

A. No, sir; I was not acquainted with him at that time.

Examination by the Mexican Commissioner.

Q. Did you or your assistant engineer have any correspondence with the foreman of the men making the cut-off?

A. The foreman asked my assistant if his employment as foreman of such work would entail upon him any responsibility, as if such was the case he would give up his position. I told him that as he was a subordinate of the Company I did not believe he could be held responsible.

The Commission then adjourned.

BROWNSVILLE, TEXAS,
October 22, 1906.

The Joint Commission met at the Federal Building at 10 o'clock a. m.

The Mexican Commissioner presented the following witnesses, all of whom were duly sworn:

Testimony of Dr. M. Barragan.

Examination by the Mexican Commissioner:

Q. What is your name, where do you reside and what is your occupation?

A. M. Barragan; Brownsville, Texas, and am Mexican Consul at Brownsville.

*See page 36.

R. Yo creo que la accion del Rio habria producido el cambio sin ninguna obra posterior.

P. ¿Noté usted en su ultimo viaje, el 19 de Octubre, alguna destruccion en las márgenes del Rio?

R. Sí; hasta cierto punto, en donde el antiguo cauce del rio se une con el corte.

P. ¿Puede usted señalar en el croquis en donde se ha verificado esa destruccion?

(El Comisionado Mexicano presento aqui un croquis que muestra aproximadamente al Rio Grande en la proximidad del Rancho del Horeon y que se ha marcado Anexo "A.")

R. Sí; la destruccion está en la margen del Rio del lado Mexicano en un punto opuesto á la extremidad inferior del corte y rioabajo de ella.

Examen por el Comisionado Americano.

P. ¿Tuvo usted alguna vez, durante sus dos primeras visitas á las obras, alguna conversacion con Mr. Davis, encargado de los trabajos de la "Rio Grande Land and Irrigation Company"?

R. No, Señor; no lo conocia entonces. Otra pregunta del Comisionado Mexicano.

P. ¿Usted ó su Ingeniero Ayudante, tuvieron alguna conversacion con el capataz de los hombres que estaban haciendo el corte?

R. El capataz preguntó á mi Ayudante si su empleo como sobrestante de esa obra le traeria alguna responsabilidad, pues si tal era el caso abandonaria su empleo. Le dije que no creia que pudiera hacérsele á él responsable supuesto que era sólo un empleado de la compañía.

La Comisión Mixta levantó enseguida su sesion.

BROWNSVILLE, TEXAS,
Octubre 22 de 1906.

La Comisión Mixta se reunió en el Edificio Federal á las 10 A. M.

El Comisionado Mexicano presento los siguientes testigos, á quienes se les tomó la debida protesta.

Testimonía del Doctor M. Barragán. Examen por el Comisionado Mexicano.

P. ¿Cuáles son el nombre, la residencia y la ocupacion de usted.

R. M. Barragán. Brownsville, Texas, y soy el Cónsul Mexicano en Brownsville.

Q. When you first had knowledge of the work being done by the American Rio Grande Land and Irrigation Company did you notify the officers of that company that there was a Boundary Commission, duly organized under treaty between the United States and Mexico, and that the work they were doing was contrary to said treaty?

A. I communicated with the president of the company at Lonsboro, Texas, and informed him that he must suspend operations until he received permission from the two governments, as the work he was doing was contrary to the Treaty between the two countries.

Q. When did you write this communication?

A. About the first part of July, 1906.

Q. Did the company answer your communication?

A. No, sir.

(The Mexican Commissioner produced a copy of the communication referred to, which is attached hereto and made a part of the record, and marked "Exhibit B.")*

Testimony of Joaquín Argüelles.

Examination by the Mexican Commissioner:

Q. What is your name, where do you reside and what is your occupation?

A. Joaquín Argüelles; Matamoros, Mexico, and am a municipal officer of Matamoros.

Q. Do you own property in Mexico, on the Rio Grande, adjoining the Horcón Ranch?

A. Yes, sir.

Q. What is the name of your property?

A. La Union Ranch.

Q. Did the cut-off made by the American Rio Grande Land and Irrigation Company cause you any damage?

A. It deprived my property of the use of the water of the river.

Q. It was not the water I referred to—did the cut-off cause the destruction of any of your land?

A. It only took the water from the land, it did not destroy it.

Q. When you saw that a cut-off was being made on the American side did you attempt a like cut-off on the Mexican side?

A. Two or three days before the river changed its course some of the neighbors attempted to make a cut-off to pre-

P. ¿Cuándo supo usted por primera vez de la obra que estaba haciendo en el río la "Rio Grande Land and Irrigation Company" notificó usted á los Directores de ella que existía una Comisión de Límites, debidamente organizada por un Tratado entre México y los Estados Unidos, y de que la obra que estaban haciendo era contraria á los Tratados?

R. Puse una comunicación á Lonsboro, Texas, al Presidente de la Compañía y le advertí que debía suspender sus trabajos hasta que obtuviesen permiso de los dos Gobiernos, porque la obra que hacían era contraria á los Tratados.

P. ¿Cuándo puso usted esa comunicación?

R. Á principios de Julio de 1906.

P. ¿Contestó la comunicación de usted la Compañía?

R. No, Señor.

(El Comisionado Mexicano presentó aquí una copia de dicha comunicación y se adjuntó á esta acta, con la letra "B," para que forme parte de ella.)

Testimonia de Joaquín Argüelles.

Examen por el Comisionado Mexicano.

P. ¿Cuáles son su nombre, residencia y ocupación?

R. Joaquín Argüelles; Matamoros, México; empleado municipal de Matamoros.

P. ¿Tiene usted propiedades en México, en el Rio Grande, cerca del Rancho del Horcón?

R. Sí, Señor.

P. ¿Cómo se llama su propiedad?

R. Rancho de La Unión.

P. ¿Le causó á usted algún perjuicio el tajo hecho por la "American Rio Grande and Irrigation Company"?

R. Privó á mi propiedad del uso del agua del río.

P. No me refería al agua, sino á que si el tajo produjo destrozos en su terreno.

R. Sólo le quitó el agua; no lo destruyó.

P. ¿Cuándo ustedes vieron hacer ese corte en el lado Americano, intentaron otro parecido en el Mexicano?

R. Dos ó tres días antes del cambio del río, algunos vecinos trataron de hacer otro corte para impedir el daño.

*See page 22.

vent the damage that might be caused by reason of the cut-off on the American side

Q. State what damage has been sustained by your property by reason of the lack of water in the abandoned bed of the river?

A. We are damaged by lack of water for the inhabitants, the stock and for agricultural purposes.

Testimony of Desiderio Cantú.

Examination by the Mexican Commissioner.

Q. What is your name, where do you reside and what is your occupation?

A. Desiderio Cantú; Horcon Ranch; a farmer.

Q. Have you any land in Mexico on the Rio Grande, and if so, what is its name and location?

A. Yes; I own land called Horcon Ranch, in Section 15 of the Jurisdiction of Matamoras.

Q. Has the cut-off made by the American Rio Grande Land and Irrigation Company caused any destruction to your land?

A. Yes, sir.

Q. Has the lack of water in the old river bed caused any damage to your land?

A. Yes, sir.

Q. What damage?

A. I am unable to properly irrigate my land on account of the scarcity of water.

Q. Was an attempt made to make a cut-off on the Mexican side so that the river would not change by reason of the cut-off on the American side?

A. Yes, sir.

Q. What prevented the accomplishment of this work?

A. Some of the neighbors on Las Peladas Ranch objected to it.

Q. When work was commenced on the American side what was your understanding as to its object?

A. I was given to understand that it was a levee to protect their land.

Q. Who informed you of this?

A. The people who were employed by the American company to make the cut-off.

Testimony of Geronimo Bazán.

Examination by the Mexican Commissioner.

Q. What is your name, where do you reside and what is your occupation?

A. Geronimo Bazán, Ranch La Bolsa; a farmer.

Q. Are you the owner of La Bolsa Ranch?

que podia causar el hecho en el lado Americano.

P. ¿Diga usted qué mal ha sufrido su propiedad por la falta del agua en el cauce abandonado del río?

R. Los perjuicios que causa la falta del agua se extienden á los habitantes, el ganado y la agricultura.

Testimonio de Desiderio Cantú.

Examen por el Comisionado Mexicano.

P. ¿Cuál es el nombre de usted, dónde reside y cuál es su ocupación?

R. Desiderio Cantú. Rancho del Horcón. Labrador.

P. ¿Posee usted tierras en México, en el Río Grande y, en ese caso, cómo se llaman y dónde están?

R. Sí; soy dueño del Rancho del Horcón, de la Sección 15 de la Jurisdicción de Matamoras.

P. ¿Ha causado algún destrozo en sus tierras el tajo construido por la "American Rio Grande Land and Irrigation Company"?

R. Sí, Señor.

P. ¿La falta de agua en el cauce viejo, le origina algún perjuicio á su terreno?

R. Sí, Señor.

P. ¿Cuál?

R. Que ya no puedo regar convenientemente mi tierra por la escasez del agua.

P. ¿Se hizo en el lado Mexicano algún intento para hacer en él otro corte que impidiera que el río se desviara por el tajo Americano?

R. Sí, Señor.

P. ¿Qué impidió la ejecución de esa obra?

R. Algunos vecinos del Rancho de Las Peladas se opusieron á ello.

P. Cuando se empezaron los trabajos del lado Americano ¿qué se les dijo á ustedes que tenían por objeto?

R. Se me dió á entender que estaban haciendo un borde para defender su terreno (de la Compañía).

P. ¿Quien le informó á usted de eso?

R. La gente empleada en el tajo por la Compañía.

Testimonio de Geronimo Bazán.

Examen por el Comisionado Mexicano.

P. ¿Cómo se llama usted, dónde reside y cuál es su ocupación?

R. Geronimo Bazán. Rancho de La Bolsa. Labrador.

P. ¿Es usted dueño del Rancho de La Bolsa?

A. Yes, sir.

Q. Has the cut-off made by the American Rio Grande Land and Irrigation Company caused the destruction of your land?

A. Yes.

Q. Has the scarcity of water in the abandoned bed of the river caused you any damage?

A. Yes.

Q. What damage?

A. The damage is caused on account of my horse stock being unable to obtain water.

Q. Do you know whether any work was done on the Mexican side of the river to prevent the river from changing its course by reason of the cut-off on the American side?

A. I do not know of any.

Q. When the work was commenced on the American side what were you told they were going to do?

A. They (the company) did not tell me anything, but I was informed that they were going to build a levee.

Examination by the American Commissioner:

Q. You have stated that the cut-off injures you because it deprives your horses of water. Is not the cut-off above your ranch—Las Bolsa?

A. Yes, sir; but my horses graze up above the cut-off.

Q. Do you own the land where your horses graze above the cut-off?

A. Yes, sir; I have a community interest in it.

Testimony of Primitivo Hinojosa.

Examination by the Mexican Commissioner:

Q. What is your name, where do you reside and what is your occupation?

A. Primitivo Hinojosa; La Palma Ranch; a farmer.

Q. Are you the owner of any land in Mexico, in the vicinity of Horcon Ranch?

A. Yes; La Bolsa Ranch.

Q. Did the cut-off made by the American Rio Grande Land and Irrigation Company on the American side cause the destruction of any of your land?

A. No; there was no destruction of my land, but it injured my crop by causing the river to overflow, and I believe it will ultimately destroy my land.

Q. Will the scarcity of water in the abandoned bed of the river cause you any damage?

A. No.

Q. Do you know whether any attempt

R. Sí, Señor.

P. ¿Ha causado destrozos en sus terrenos el tajo hecho por la "American Land and Irrigation Company"?

R. Sí.

P. La falta del agua en el lecho viejo ¿le ha causado á usted algún perjuicio?

R. Sí.

P. ¿Cuál?

R. El perjuicio consiste en que mi caballada no tiene ya agua que beber.

P. ¿Sabe usted si se hizo en el lado Mexicano alguna obra para impedir que el río se cambiara por el tajo hecho del lado americano?

R. No sé de nada.

P. Cuando se empezó la obra del lado Americano ¿qué le dijeron á usted que se estaba haciendo?

R. Á mí no me dijeron nada; pero si supe que iban á hacer un bordo de defensa.

Examen por el Comisionado Americano.

P. Ha dicho usted que el tajo le perjudica porque deja á sus caballos sin agua; ¿no está el tajo más río-arriba que el Rancho de La Bolsa?

R. Sí, Señor; pero mis caballos pastan arriba de donde sale el tajo.

P. ¿Es de usted el terreno en que pastan sus caballos, arriba del tajo?

R. Sí, Señor; son terrenos de comunidad.

Testimonio de Primitivo Hinojosa.

Examen por el Comisionado Mexicano.

P. ¿Cómo se llama usted, dónde reside y cual es su ocupación?

R. Primitivo Hinojosa. Rancho de La Palma. Labrador.

P. ¿Posee usted terreno en México, cerca del Horcón?

R. Sí; el Rancho de La Bolsa.

P. ¿Ha causado algún destrodo en su terreno el tajo hecho del lado Americano por la "American Land and Irrigation Company"?

R. Nó; no ha destruido mi terreno; pero perjudicó mis cosechas, porque hizo que el río las inundara y creo que al fin también destruirá mis tierras.

P. ¿Le causa á usted perjuicio la falta de agua en el cauce viejo?

R. No.

P. ¿Sabe usted de algún intento del

was made on the Mexican side to make a cut-off to prevent the change in the river by reason of the cut-off on the American side?

A. Yes.

Q. What prevented the accomplishment of this cut-off?

A. I do not know.

Q. When the cut-off was being made on the American side did the workmen engaged in such work make any statement to you as to its object?

A. Yes; they said they were making a levee.

Examination by the American Commissioner:

Q. You have stated that you believe the cut-off will in the future destroy your land. What is your reason for thinking so?

A. I believe that the current of the river will cause my land along the banks of the river to cave in.

Testimony of Natividad Cantú.

Examination by the Mexican Commissioner:

Q. What is your name, where do you reside and what is your occupation?

A. Natividad Cantú; La Bolsa Ranch; a farmer.

Q. Are you the owner of any land near the Horcon Ranch in Mexico?

A. Yes; I have an interest in La Bolsa Ranch.

Q. Has the cut-off on the American side made by the American Rio Grande Land and Irrigation Company caused any destruction of your land?

A. Since making the cut-off on the American side my lands have been overflowed with water; the water coming into the houses. The current in the river ate into the banks and caused them to drop into the water.

Q. Is the water still on your land?

A. Part of the land is still under water.

Q. Did the scarcity of water in the abandoned bed of the river cause you any damage?

A. Yes; it was a watering place for my animals, and as I own cows I am damaged to that extent.

Q. Do you know if the Mexicans made an attempt to make a cut-off on the Mexican side to prevent the river from changing its course by reason of the cut-off on the American side?

A. They attempted such a work, but abandoned it.

Q. Do you know why the work was abandoned?

lado Mexicano para hacer otro tajo que impidiera al río cambiar por el que se hizo en el lado Americano?

R. Sí.

P. ¿Qué impidió que se hiciera?

R. No sé.

P. ¿Dijeron á usted algo los trabajadores que hicieron el tajo Americano sobre su objeto, cuando empezaron á hacerlo?

R. Sí, decían que estaban haciendo un bordo de defensa.

Examen por el Comisionado Americano.

P. Ha dicho usted que cree que el tajo destruirá en lo futuro sus tierras ¿que razón tiene para creerlo?

R. Creo que la corriente del río hará que mi terreno se vaya rompiendo á *barranco caído* (por derrumbes sucesivos).

Testimonio de Natividad Cantú.

Examen por el Comisionado Mexicano.

P. ¿Diga usted su nombre, residencia y ocupación?

R. Natividad Cantú. Rancho de La Bolsa. Labrador.

P. ¿Es usted dueño de algún terreno en México, cerca del Rancho del Horcón?

R. Sí; tengo intereses en el Rancho de La Bolsa.

P. ¿Ha causado algún destrozo en sus tierras el tajo hecho en el lado Americano por la "American Rio Grande Land and Irrigation Company"?

R. Desde que se hizo el tajo Americano mis terrenos han estado inundados, entrando el agua hasta las casas. La corriente del río ha comido los barrancos y los ha hecho caer al agua.

P. ¿Hay todavía agua en su terreno?

R. Parte de él está aún inundado.

P. ¿Le causa algún perjuicio la falta de agua en el cauce abandonado?

R. Sí, porque allí habia sido siempre chrevadero y, como tengo vacas, resiento ese perjuicio.

P. ¿Sabe usted si los Mexicanos intentaron hacer un tajo en el lado Mexicano, para impedir que el río cambiase por el del lado Americano?

R. Intentaron la obra, pero la abandonaron.

P. ¿Sabe usted por qué la abandonoaron?

A. The work was abandoned by reason of the objection of the owners of the Las Paldas Ranch.

Q. When the cut-off was being made on the American side did you have any information as to what it was intended for?

A. The workmen engaged in making the cut said it was going to be a levee.

Testimony of Chester B. Davis.

Examination by the Mexican Commissioner:

Q. Please state your name and residence?

A. Chester B. Davis My residence is, temporarily, Lonsboro, Hidalgo County, Texas.

Q. What is your profession?

A. An engineer.

Q. What is your connection with the American Rio Grande Land and Irrigation Company?

A. Engineer in charge.

Q. Have you a map of the region in which you planned your works and can you show it to us?

A. I have no map with me.

Q. Did you make a survey?

A. Only generally; there was no specific plan.

Q. Do you find this sketch, marked "Exhibit A," approximate, and will you give us an explanation of the general plan of your works in connection with this case?

A. The sketch map is closely approximate. The proper execution of the company's plan necessitated the construction of a pumping station at or near the place marked "B" on the sketch, along the north bank of the river, near Esterito ranch. An examination of the river adjacent thereto revealed the fact that a natural cut-off was possible or probable at or near the point marked "A" on the sketch, up stream from the proposed station, which cut-off, if it occurred, would render of little or no value the site which the company wished to use. A determined effort was made torevet the shore on the southerly side of the neck at or near the impending cut-off, and a very considerable expenditure of money was made in trying to hold it against the river. This work extended over a period of some three months. The neck at the point "A" at

R. La obra fué abandonada por la oposición de los dueños del Rancho de Las Peladas.

P. Cuando se estaba haciendo el tajo Americano ¿tuvo usted algunos informes sobre el fin á que se le destinaba?

R. Los trabajadores empleados en él decían que iba á ser un bordo de defensa.

Testimonia de Chester B. Davis.

Examen por el Comisionado Mexicano.

P. Sirvase usted decir su nombre y su residencia.

R. Chester B. Davis. Mi residencia temporal es Lonsboro, Hidalgo County, Texas.

P. ¿Cuál es la profesión de usted?

R. Ingeniero.

P. ¿Cual es su conexión con la "American Rio Grande and Irrigation Company"?

R. Soy su Ingeniero Director.

P. ¿Posee usted algún plano de la región en el cual haya proyectado sus obras y puede usted enseñárnoslo?

R. No traigo conmigo ningún plano.

P. ¿Poco hizo usted algún levantamiento?

R. Sólo de un modo general; no hubo ningún plano detallado.

P. ¿Cree usted aproximado este croquis, marcado Anexo "A," y quiere usted darnos por medio de él una explicación del plan general de sus obras relativa á este caso?

R. El croquis es bastante aproximado. La ejecución apropiada de los planes de la Compañía exijía la construcción de una estación de bombas en el lugar marcado "D" en el croquis, ó cerca de él, á lo largo de la margen norte del río y cerca del Rancho del Esterito. Un examen de la parte adyacente del río, reveló el hecho de que era muy posible ó que se produjera naturalmente un corte en el río en el punto marcado "A" en el dibujo, ó cerca de él, aguas-arriba de la propuesta estación de bombas. Tal corte, de verificarse, convertiría en—de poco ó de ningún valor el sitio que la Compañía deseaba usar. Se hizo un esfuerzo decisivo para revestir la ribera en la parte sur de la garganta en que amenazaba el cambio y se gastó una considerable cantidad de dinero en tratar de defenderla contra el río. Esta obra se extendió á un periodo de tiempo de cerca de tres meses. La garganta en el punto "A." en donde amenazaba el cambio, resultó ser de arena muy fina casi movediza, facilmente atacada por la co-

the impending cut-off proved to be of very fine sand, almost a quicksand, which was very easily eroded by current or wave action, and it was practically impossible after an exhaustion of all the means available to hold the revetment in place and to prevent the bank from cutting severely. These results, in my opinion, were aggravated by reason of the fact that there was a difference in the river's elevation between the high side and low side of the neck approximating 12 inches. The neck was so narrow, it being less than 100 feet in width at various points along it, that the water passing through the neck from the upper river kept this fine and almost quicksand almost saturated, it being robbed of all its stability, and the company was forced to abandon further work and effort to prevent the cut-off at this point. This work was done with the full consent and approval of Senor Solis, the owner of the property, which was under Mexican jurisdiction.

The Company has expended large sums of money in building various portions of its irrigation system; all looking to the erection of the pumping plant near the point "B," referred to above, practically all of which investment would be lost or of little use to the company if the cut-off, now almost inevitable, was permitted to occur at the point marked "A," since the river would follow a channel entirely remote from the pumping site. To protect itself against such a result a neck of land at or near the point marked "C" was cut through, the neck "C" being on land owned by the company and under American jurisdiction.

Q. Of course, when you took charge of the work you knew that the Rio Grande was the boundary between the United States and Mexico?

A. Yes, sir.

Q. Did you know of the existence of any treaties between the two countries regarding said boundary?

A. Generally.

Q. Have you read them?

A. I never saw a copy, nor read a copy, until after the work was completed.

Q. While the work was progressing had you any warning as to probable international complications as a result of such work. Any official warning?

A. I do not recall any warning or offi-

riente y la acción de las olas, y se encontró practicamente imposible, después de agotar todos los recursos que habia á mano, conservar en su sitio el revestimiento é impedir que el barranco fuera seriamente atacado. Según me parece, este resultado se agravó por el hecho de existir una diferencia de nivel de cerca de doce pulgadas en el rio entre la parte alta y la baja de esta garganta que estan estrecha que tiene menos de 100 pies de ancho en varios de sus puntos, pudiendo pasar el agua á través de ella desde la parte superior del rio y conservando casi saturada esta arena fina y movediza; tal cosa la privaba por completo de su estabilidad y obligó á la Compañía á abandonar toda obra ó esfuerzo posterior por impedir el cambio en este sitio. Los trabajos que allí se hicieron se emprendieron con pleno consentimiento y la aprobación del Señor Solis, propietario del terreno que esta en jurisdicción mexicana.

La Compañía habia gastado ya grandes sumas de dinero en construir varios tramos de su sistema de irrigación, todos basados en la erección de una planta de bombeo cerca del punto "B" antes citado. Prácticamente se habria perdido, ó habria sido de poca utilidad para la Compañía, todo ese gastossi se hubiera permitido que se verificara en el lugar marcado "A" el cambio ya casi inevitable, supuesto que el rio seguiria un cauce completamente lejano del lugar de bombeo. Para protegerse contra tal resultado se hizo un corte á través de la parte estrecha del terreno en que se halla el punto marcado "C," quedando toda la faja "C" en terreno de propiedad de la Compañía y de jurisdicción Americana.

P. ¿Por supuesto, cuando usted tomó á su cargo la obra sabia que el Rio Grande es la frontera entre México y los Estados Unidos?

R. Sí, Señor.

P. ¿Sabia usted la existencia de ciertos tratados entre los dos países respecto á esta frontera?

R. De un modo general.

P. ¿Los habia usted leído?

R. Nunca vi ni leí un ejemplar de ellos sino hasta después de que la obra estaba hecha.

P. ¿Tuvo usted durante la ejecución de la obra alguna advertencia en cuanto á la probabilidad de complicaciones internacionales como resultado de dicha obra; alguna advertencia oficial?

R. No recuerdo de ninguna notificación ó advertencia oficial. Estoy seguro

cial notification. I am certain that none ever came to my department.

Q. When you began the work did you authorize Mr. Silver or your foreman to make a statement about its object?

A. Mr. Silver is the business manager of the company and is not under my authority.

Q. Can you tell us whether your company has a charter, and if so from what government?

A. I understand that it is organized under the laws of the State of Texas, but I have no personal knowledge as I am not an officer of the company.

Examination by the American Commissioner:

Q. Has the company a map of the land and proposed work to your knowledge?

A. There never has been a survey made from which could be produced a map of the river as it now is. There are in the office of the Engineering Department of the company a copy of the portfolios of maps issued by the Boundary Commission, which is used as a general guide, and some surveys were made which would determine the shore line in the vicinity of the point marked "B," and down stream in the vicinity of the point marked "D," and on the American side of the river only.

Examination by the Mexican Commissioner:

Q. What was the reason for selecting, exclusively, the point marked "B" for the pumping station?

A. There were several reasons: The banks and bed of the stream at that point are very favorable for the purpose; perhaps more so than at any other point in miles. Immediately adjacent to and north of the north bank is a large lagoon which the company has converted into a reservoir with a superficial area approximating 350 acres, which it intends to use as a sedimentation basin to prevent the filling up of its main canal by sediment, which would otherwise be deposited in them and had very nearly completed that work; and another reason is, that at this precise location there was a sufficient bed of very hard clay to form a most excellent foundation. The shores and land adjacent to the river along the company's front on the river are mostly fine sand and

de que ninguna llegó nunca á mi departamento.

P. ¿Autorizó usted, cuando empezó sus trabajos, á Mr. Silver ó á su capataz para hacer algunas aserciones respecto al objeto de ellos?

R. Mr. Silver es el Gerente de la Compañía y no está bajo mi dependencia.

P. ¿Puede usted decirnos si su Compañía tiene alguna concesión oficial y de qué Gobierno?

R. Entiendo que está organizada bajo las leyes del Estado de Texas; pero no tengo un conocimiento personal de ello porque no soy uno de los Directores de la Compañía.

Examen por el Comisionado Americano.

P. ¿Según lo que usted sabe, tiene la Compañía algún plano del terreno y de las obras proyectadas?

R. Nunca se ha hecho ningún levantamiento del que pueda tomarse algún plano del Río en su actual estado. Hay en las oficinas del departamento de ingeniería de la Compañía un ejemplar de los atlas de planos publicados por la Comisión de Límites que se usa como guía general, y se han hecho algunos levantamientos que podrían determinar la línea de ribera en la proximidad del punto marcado "B" y río-abajo en las cercanías del punto marcado "D" y sólo del lado Americano del Río.

Examen por el Comisionado Mexicano.

P. ¿Qué razón para elegir para estación de bombas exclusivamente el punto marcado "B"?

R. Hubo varias razones; los bordes y el cauce del Río en ese punto son muy favorables para el objeto, tal vez más que cualquiera otro punto en varias millas á la redonda. Inmediatamente junto á la margen norte y al norte de ella, hay una gran laguna que la Compañía había convertido en una presa cuya area aproximativa as de 350 acres y que trataba de usar como vaso de sedimentación para impedir el azolve do su canal principal á causa del sedimento, que de otra manera se depositaría en él; esa obra estaba casi concluida ya. Otra razón es que en ese lugar precisamente hay una capa de barro muy duro bastante para formar una excelente cimentación. Las márgenes del río y el terreno adyacente á ellas á lo largo de la propiedad de la Compañía, está formado principalmente de arena fina y movediza difícil, si no imposible, para una buena

quicksand, making foundations difficult, if not impossible. And also, the height of the bank with reference to the average high water is such that a pumping station could be built without fear of inundation. At no point west of point "B," within a distance of two miles, was the bank known to be suitable, most of it being below the level of high water.

Q. Was the selection of this cut-off determined by the economy of the location or for other reasons?

A. Primarily I suppose it was influenced by economic conditions. It was the narrowest point; material seemed suitable and the conditions seemed to warrant the belief that it would ultimately straighten itself and harmonize with the channel below.

Examination by the American Commissioner:

Q. Who is the President of your Company?

A. Mr. Thomas W. Carter, of St. Louis.

Q. Are communications addressed to him at Lonsboro, Texas, forwarded to him?

A. Lonsboro is not a postoffice and mail is never delivered to us there, but if so addressed is sent to the branch Dead-Letter Office of the Postoffice Department at San Antonio, Texas, and from there is returned to the writer.

Q. You met the Consulting Engineers of this Commission about July 14th, did you not?

A. Yes, sir.

Q. Did the company continue the work on this lower cut-off after the visit of the Consulting Engineers?

A. Yes, sir; its work was confined to efforts to prevent erosion of the Mexican bank and to cause the river to harmonize with the channel below.

The Commission then adjourned.

BROWNSVILLE, TEXAS,
October 24, 1906.

The Joint Commission met at 10:30 a. m. at the Federal Building

The Joint Commission having carefully considered the state of the works done on the Rio Grande by the American Rio Grande Land and Irrigation

ementación. Además, la altura del barranco respecto á las altas aguas ordinarias es tal que podría construirse allí una estación de bombeo sin temor de inundación. En ninguna parte al oeste del punto "B," dentro de una distancia de dos millas, estaba la margen á propósito para la instalación, quedando la mayor parte de ella debajo del nivel de las altas aguas.

P. ¿La localización del corte fué determinada únicamente por la economía, ó hubo otras razones?

R. Yo creo que de un modo fundamental se debió á las condiciones económicas. Era un sitio angosto; el material parecía conveniente y las condiciones apoyaban la creencia de que el norte se enderezaría por sí mismo, en último resultado, armonizándose hacia abajo con el cauce del Río.

Examen por el Comisionado Americano.

P. ¿Quién es el Presidente de la Compañía de usted?

R. Mr. Thomas W. Carter, de Saint Louis.

P. ¿Las comunicaciones que se le dirigen á Lonsboro, Texas, les son entregadas?

R. Lonsboro no tiene oficina de correo y nunca se nos entrega correspondencia allí sino que la que va así dirigida se pasa á la Sección de correspondencia sobrante de la Oficina de Correo de San Antonio, Texas, y de allí se devuelve á quien la envió.

P. ¿Recibió usted á los Ingenieros Consultores de esta Comisión hacia el 14 de Julio, no es verdad?

R. Sí, Señor.

P. ¿Continuó la Compañía su trabajo en este corte después de esa visita de los Ingenieros Consultores?

R. Sí, Señor. Su obra se limitó á esfuerzos para impedir la erosión de la margen Mexicana y para obligar al Río á armonizarse con el cauce antiguo situado más abajo.

La Comisión Mixta levantó enseguida su sesión.

BROWNSVILLE, TEXAS,
Octubre 24 de 1906.

La Comisión Mixta se reunió á las 10:30 A. M. en el Edificio Federal.

Habiendo estudiado cuidadosamente la Comisión Mixta las obras hechas en el Rio Grande por la "American Rio Grande Land and Irrigation Company," según el estado de ellas observado du-

Company, as observed by it during its visit to that place on the 19th instant, and having listened to the sworn testimony of the several witnesses, connected by reference to the approximate sketch map of the locality prepared by the Consulting Engineers, and attached hereto, find the following facts:

That the said American Rio Grande Land and Irrigation Company did wrongfully and knowingly cause a change in the current channel of the Rio Grande where it constituted the boundary line between the United States of Mexico and the United States of America, by artificial means, and in direct violation of Article III of the Convention of November 12, 1884, between the two Governments, and if said Article III is applied the change in the running channel of the river produces no alteration in the boundary line, which still continues in the old bed of the river.

The Commissioners are of opinion that indemnity should be made for this wrong, but they do not understand that the Treaties under which it was organized and under which this investigation was conducted confers upon it jurisdiction over the title to land, damage to property, the control of riparian rights or the enforcing of reparation for wrongs by offenders for changing the channel of the river where it constitutes the boundary.

Nevertheless, as this is a novel case, wherein it appears that some example should be set and a precedent established in order to deter others from similar wrongs, we submit the question to the better judgment of our respective Governments for instructions as to further proceedings.

The Consulting Engineers took photographs at the points marked *E, F, G, H,* and *I* on the sketch map herewith, which will be forwarded to be attached to the papers herewith and made a part of the record as soon as received from the photographer.

The Commission then adjourned.

ANSON MILLS.
WILBUR KEBLINGER.
FERNANDO BELTRÁN Y PUGA.
CÉSAR CANSECO.

rante la visita á la localidad hecha el día 19 del actual; después de escuchar el testimonio juramentado de los diversos testigos, conectándolo y refiriéndolo al croquis aproximado del lugar preparado por los Ingenieros Consultores y aquí adjunto, dicha Comisión resuelve lo siguiente:

Que la referida "American Rio Grande Land and Irrigation Company" causó á sabiendas é ilegalmente un cambio en el curso normal del Rio Grande en la parte en que forma la linea limitrofe entre los Estados Unidos Mexicanos y los Estados Unidos de América, usando para ello de medios artificiales y violando directamente el Artículo III de la Convención de Noviembre 12 de 1884 entre ambos Gobiernos. Que, si se aplica dicho Artículo III, el cambio citado no produce alteración en la linea limitrofe, que continua estando en el locho antiguo del Rio.

Los Comisionados opinan que debe hacerse alguna reparación por este mal; pero no creen que los Tratados según los cuales está organizada la Comisión y se ha conducido esta investigación les concedan derecho de dictaminar en lo relativo á títulos de propiedad de tierras, estimación de perjuicios á las propiedades y determinación de los derechos de los ribereños, ni de imponer á las personas que hayan cometido la ofensa de cambiar el curso del Rio en donde sirve de linea limitrofe la obligación material de reparar el mal hecho.

Sin embargo, siendo este un caso de carácter completamente nuevo en la Comisión y por el cual aparece la necesidad de hacer un ejemplar y establecer precedentes que impida á otras personas cometer ofensas análogas, sometemos tal decisión al mejor criterio de nuestros respectivos Gobiernos en demanda de instrucciones respecto á nuestros posteriores procedimientos.

Los Ingenieros Consultores tomaron varias fotografías, en los puntos marcados "E," "F," "G," "H," "I," sobre el croquis adjunto, las cuales serán remitidas, tan pronto como las entregue el fotógrafo, para que se adjunten á este expediente y formen parte de él.

La Comisión Mixta levantó enseguida su sesión.

FERNANDO BELTRÁN Y PUGA.
CÉSAR CANSECO.
ANSON MILLS.
WILBUR KEBLINGER.

(Translation.)

Exhibit B.

CONSULATE OF THE UNITED STATES OF MEXICO.

BROWNSVILLE, TEXAS, July 1, 1906.

Having seen the works you are carrying on, on both sides of the Rio Grande, with the apparent intention of diverting the channel of this international stream, I hereby notify you that such work must be discontinued until permission is obtained from both governments—the United States and Mexico—inasmuch as such diversion, although its object may be highly commendable, is contrary to existing treaties between the United States and Mexico, and the regulations of the Boundary Commission created thereunder.

Hoping that the matter may be given your immediate attention, I have the honor of assuring you and your company of my most distinguished consideration.

(Signed) MGL. BARRAGAN.

To MR. S. P. SILVER,
President of the Rio Grande Land and Irrigation Co.,
Sam Fordyce, Texas.

A true copy:

WILBUR KEHLINGER,
Secretary, U. S. Section,
International Boundary Commission.

Anexo "B."

Al margen un membrete que dice:
"Consulado de los Estados Unidos Mexicanos en Brownsville, Texas."
Número 1.

BROWNSVILLE, TEXAS,
Julio 1° de 1906.

Habiendo visto los trabajos que por su cuenta están llevando á cabo sobre ambas márgenes del Rio Bravo, con el ostensible objeto de desviar la corriente de dicho Rio "Internacional," con toda atención y respeto prevengo á usted que deben suspenderse los trabajos mientras tanto no obtengan el permiso de ambos Gobiernos, México y los Estados Unidos, puesto que la obra que están ustedes practicando desvia la corriente del Rio que es Internacional, y tales trabajos aún cuando sean con noble objeto, pugnan con nuestros tratados internacionales y con el pacto hecho entre las Comisiones de Límites del Rio Bravo nombradas por esta Nación y la República de México.

Esperando ser atendido en éste importante asunto, tengo el honor de protestar á usted y á todos los demás miembros de la Compañía mi distinguida consideración.

El Cónsul,
(Firmado) MIGUEL BARRAGAN,
Rúbrica.

Al Señor S. P. SILVER,
Presidente de la Compañía Rio Grande Land and Irrigation,
Sam Fordyce, Texas.

Escopia:
BROWNSVILLE, TEXAS,
Octubre 24 de 1906.
CÉSAR CÁNSICO,
Secretario Mexicano.

EL PASO, TEXAS, November 5, 1906.

The Honorable, the Secretary of State.

SIR: Referring to my letter of October 24th last, forwarding proceedings of the "Horeon Ranch Case," I have the honor to enclose herewith four photographs which are a part of those proceedings and should be attached thereto.

I have the honor to be, Sir,

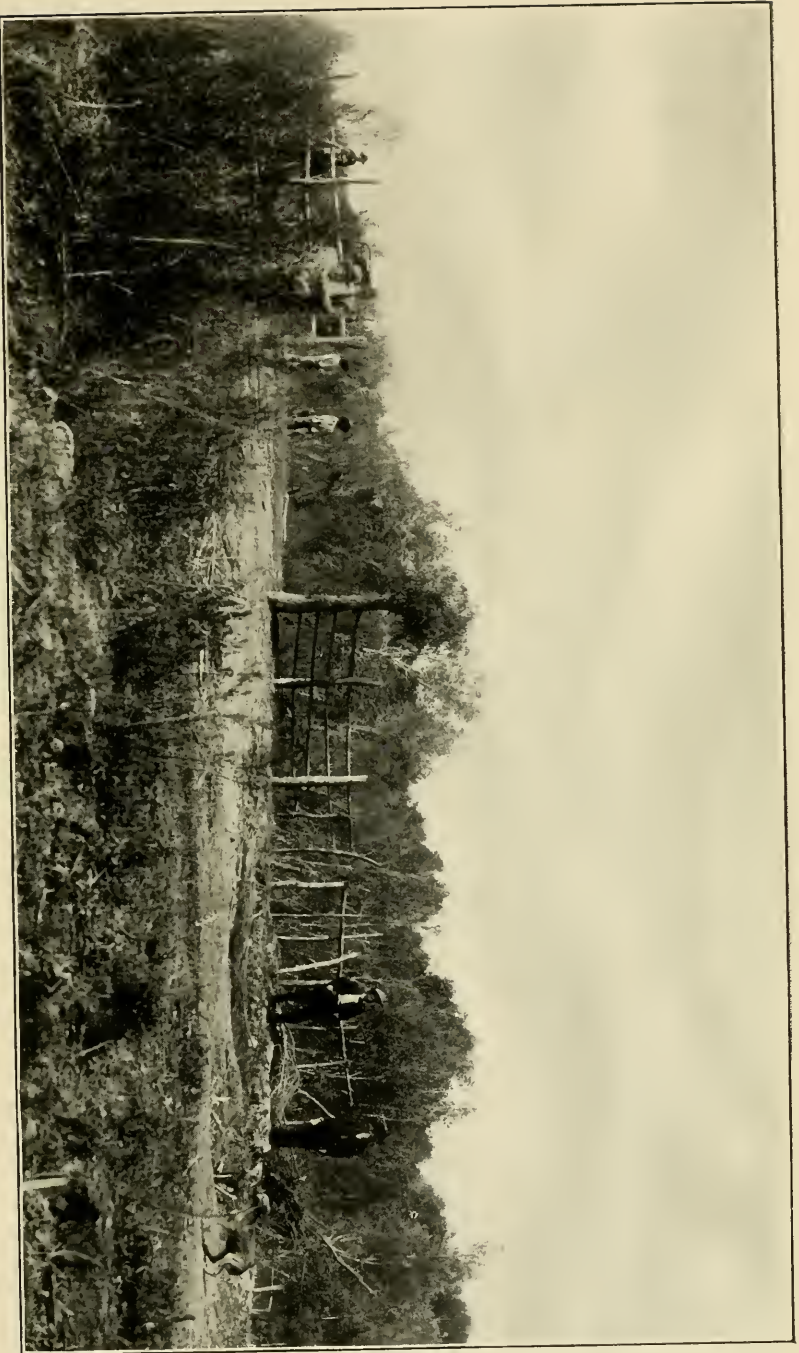
Very respectfully,

Your obedient servant,

ANSON MILLS,
Brigadier General, U. S. Army, Retired, American Commissioner.

Enclosures:

Four photographs.



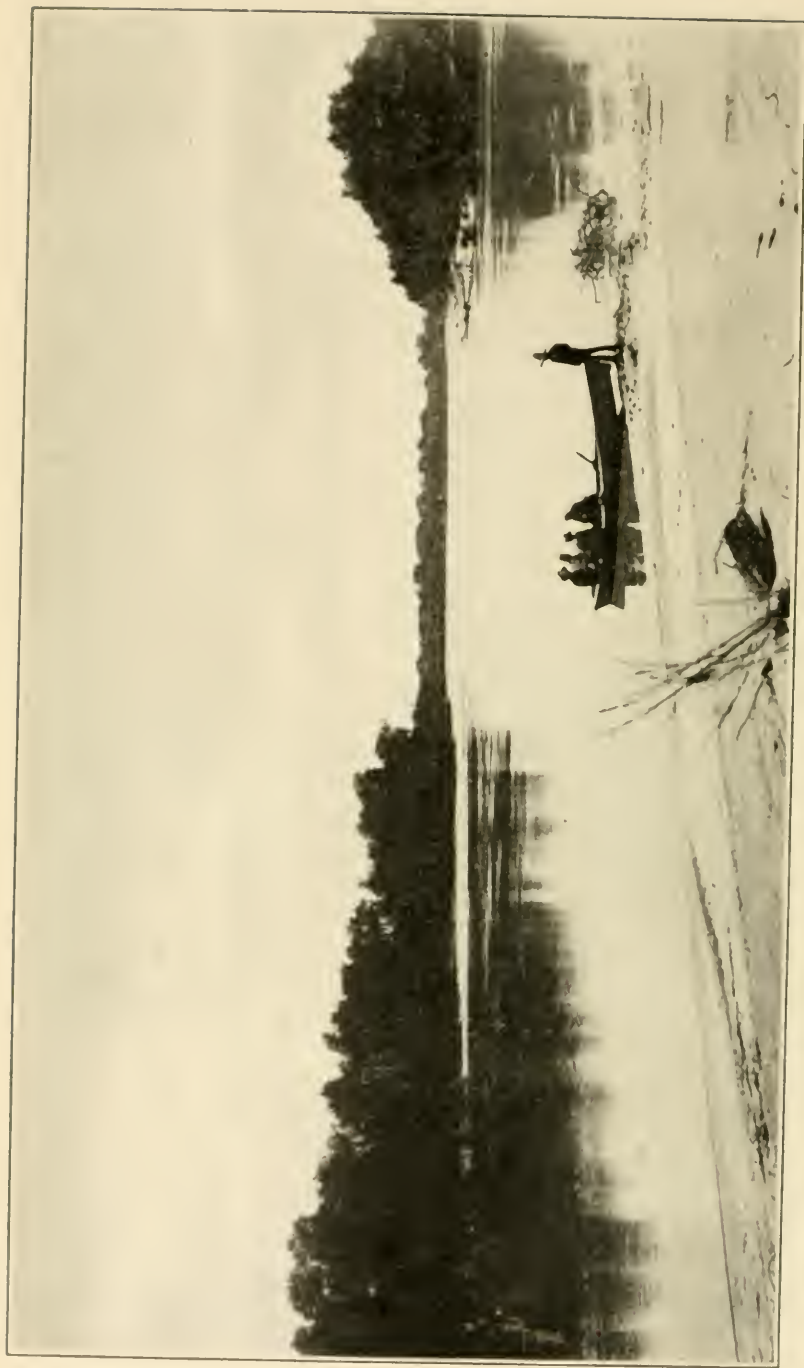
VIEW TAKEN WITH CAMERA AT "E" (SEE SKETCH MAP) LOOKING WEST, AND SHOWING NARROW NECK. GENERAL MILLS—
AT EXTREME RIGHT—IS STANDING ON BANK OF RIO GRANDE. MR. CANSISCO, ON LEFT, IS STANDING NEAR BANK OF OLD RIVER.
WIDTH OF NECK—ABOUT 50 FEET—15 METERS. TAKEN OCT. 19, 1906.



VIEW TAKEN WITH CAMERA AT "F" (SEE SKETCH MAP) LOOKING EAST THROUGH CUT-OFF. THE BLUFF BANK AT LEFT IS A CAVING BANK ON THE U. S. SIDE OF RIVER. THE HORIZONTAL POLE NEAR CENTER OF PICTURE IS ON THE REMAINS OF THE WASTE BANK FORMED WHEN DITCH WAS CUT. THE BLUFF BANK IN THE DISTANCE IS A CAVING BANK ON MEXICAN SIDE OF THE RIVER. THE SOUTH BANK OF CUT-OFF IS JUST OUTSIDE LIMIT OF PICTURE. TAKEN OCT. 19, 1906.



VIEW TAKEN WITH CAMERA AT "F" (SEE SKETCH MAP) LOOKING SOUTH INTO UPPER MOUTH OF OLD RIVER. THE TREES ON LEFT MARK THE OLD LEFT, OR U. S. BANK OF RIVER. THE RIGHT BANK WAS A SAND BAR WHICH HAS MERGED INTO THE NEW BAR. IT IS PROBABLY OUTSIDE THE LIMIT OF THIS PICTURE. TAKEN OCT. 19, 1906.



VIEW TAKEN WITH CAMERA AT "H" (SEE SKETCH MAP) LOOKING SOUTH INTO LOWER MOUTH OF OLD RIVER. THE TREES ON THE LEFT MARK THE OLD RIGHT OR MEXICAN BANK OF RIVER, WHILE THOSE ON THE RIGHT MARK THE U. S. BANK. THE RIVER IS FLOWING ACROSS THE FOREGROUND FROM RIGHT TO LEFT. THE SPACE BETWEEN THE BOAT AND THE TREES ON THE RIGHT IS THE LOWER MOUTH OF THE CUT-OFF. TAKEN OCT. 19, 1906.

EL PASO, TEXAS, November 8, 1906.

The Honorable, the Secretary of State.

SIR: I have the honor to enclose herewith a Journal setting forth an opinion of the Mexican Commissioner regarding the lack of jurisdiction of this Commission in certain cases under existing treaties, and my reply thereto, with the request that if the Department deems it advisable it be considered in connection with the instructions asked for in the Joint Journal in the "Horcon Ranch Case," transmitted to the Department with my letter of October 24, 1906.

I have the honor to be, Sir,

Very respectfully,

Your obedient servant,

ANSON MILLS,

American Commissioner.

(JOINT JOURNAL.)

EL PASO, TEXAS, November 7, 1906.

At the conclusion of the regular business of the Joint Commission the Mexican Commissioner stated that he desired to present certain questions to the American Commissioner which had been suggested to him as a result of the recent investigation by the Commission of the Horcon Ranch case, as follows:

That the questions involved in that case brought more directly to the attention of the Commissioners, in the first place, the uncertainty of their jurisdiction and of their authority in matters pertaining to the awarding of damages and making reparation on account of works wrongfully constructed in the Rio Grande; in the second place, the undeniable fact that in the near future questions will undoubtedly be raised, owing to the rapid development of the border region, affecting the physical condition of the Rio Grande, i. e., irrigation systems deriving their water supply from the Rio Grande, which questions are not clearly within the jurisdiction of this Commission under the Treaty of March 1, 1889, creating it.

Such irrigation systems affect the physical condition of the river in two ways: (1) by the consumption of its perennial flow, and (2) by the changes wrought in its banks and channel by the subsidiary works which are necessarily a part of such systems, as has been the case in the Horcon Ranch complaint.

Article I of the Convention of 1889 puts under the "exclusive" jurisdiction of the Commission all questions of whatever kind that may arise along the Rio Grande border liable to affect the boundary line, and the Rio Grande being the

EL PASO, TEXAS, Noviembre 7 de 1906.

Una vez despachados los asuntos ordinarios de la Comisión Mixta, el Comisionado mexicano manifestó que deseaba someter al Comisionado americano las siguientes ideas, que le han sido sugeridas por el resultado de las recientes investigaciones que esta Comisión hizo en el caso del Horcón:

La materia tratado en dicho caso trajo prominentemente á la atención de los Comisionados: en primer lugar, lo incierto de su jurisdicción y de sus facultades en puntos tales como la otorgación de daños y perjuicios á causa de obras ilegalmente ejecutadas en el Río Grande; en segundo, la seguridad de que, debido al rápido desarrollo de la región de la frontera, se presentarán muy pronto á su estudio cuestiones que afectan indudablemente á las condiciones físicas del río (como son las empresas de irrigación en que se intente utilizar sus aguas), pero que parecerían no estar comprendidas con entera claridad dentro de la jurisdicción asignada á esta Comisión en el Tratado de Marzo 1° de 1889, que la creó.

Tales sistemas de irrigación afectan de dos maneras las condiciones físicas del río: (1), despojándolo de sus aguas perennes; (2), produciendo cambios en sus márgenes y en su curso con las obras accesorias que necesariamente forman parte del sistema, siendo esto precisamente lo que pasó en el paso del Horcón.

El artículo I de la Convención de 1889 pone bajo la jurisdicción "exclusiva" de la Comisión todas las cuestiones de cualquier género que de algún modo puedan afectar á la línea divisoria á lo largo del Río Grande: siendo así que tal línea

boundary line all matters affecting the river also affect, *ipso facto*, the boundary; so that all irrigating works are under the exclusive jurisdiction of the International Boundary Commission. However, the specifications and provisions of the remaining articles of the Convention are confined to the most simple cases, i. e., where avulsion has been created by natural and artificial means, which leaves the Commissioners in doubt regarding the more complicated and less clear questions, such as those which include irrigation schemes.

The Mexican Commissioner also stated that the difficulties arising out of these questions would be greatly increased if the governments of the border states were conceded the ownership of the waters of the Rio Grande—an international river—as the Federal authorities in both countries would be left without control of the waters, concerning the use of which they are bound together by solemn treaty.

The Mexican government has already given this matter its attention and has taken over the absolute control of said waters, and, therefore, no trouble is to be looked for from the Mexican side.

In the case of the Horcon Ranch investigation, however, it was understood that a charter had been granted by the State of Texas to the American Rio Grande Land and Irrigation Company, giving them certain rights to the international water, which may establish a serious precedent.

To which the American Commissioner replied that he appreciated the pertinency of the remarks of the Mexican Commissioner and is of the opinion that he has stated correctly the present status of the conditions under the treaty; that as he understands it, the Mexican Commissioner desires instructions from the two governments as to whether the following powers are conferred upon the Commission by existing treaties and in what manner they could be executed, if within the meaning of said treaties:

(a)—to restrain a contemplated violation of the treaty by a private individual or corporation;

(b)—to punish for a violation already committed;

(c)—to award damages to persons injured by the violation; and

(d)—to regulate the use of water for irrigating purposes, and if so, to what extent.

está constituida por el mismo río, todo lo que afecte á éste afectará también, *ipso facto*, á la línea y, por consiguiente, las obras de irrigación, por afectar al río, se hallan bajo la jurisdicción única de la Comisión Internacional de Límites.

Sin embargo, las reglas y provisiones de los restantes artículos de la Convención citada se concretan á los casos más simples, que son aquellos en que se ha producido una avulsión por medios naturales ó artificiales; esto deja á los Comisionados en duda respecto de cuestiones más complicadas y menos claras, como lo son las que incluyen planes de irrigación.

El Comisionado mexicano indicó, además, que las dificultades inherentes á estas cuestiones aumentarían notablemente si se reconociera á los Estados fronterizos jurisdicción sobre las aguas del Rio Grande (que es internacional), que en tal caso los Gobiernos Federales de ambos países perderían todo dominio sobre unas aguas en relación á cuyo uso se encuentran ligados entre sí por Tratados solemnes. El Gobierno mexicano ha provisto ya á esto reservándose en su lado el dominio absoluto de esas aguas y, por tanto, no habrá ninguna dificultad de parte de México; pero por la investigación del caso del Horcón se puede deducir que el Estado de Texas ha extendido una concesión á la "American Rio Grande Land and Irrigation Co.," cediéndole ciertos derechos sobre las aguas en cuestión y tal cosa podría establecer, de ser cierta, un precedente muy serio.

El Comisionado americano contestó á esto que reconocía la pertinencia de las observaciones del Comisionado mexicano y que encontraba muy correctamente definido por él el estado actual de la situación en relación con los Tratados; que, según ha podido entender, desea el Comisionado mexicano que la Comisión tenga de ambos Gobiernos instrucciones sobre si los Tratados vigentes le conceden facultades en los siguientes puntos y, en ese caso, de qué manera puede ejercerlas:

(a)—para impedir una violación de los Tratados intentada por un individuo ó una corporación;

(b)—para imponer alguna pena por violaciones ya cometidas;

(c)—para otorgar indemnizaciones á las personas perjudicadas por la violación;

(d)—para intervenir en el uso del agua para irrigación; en tal caso, en que términos.

The American Commissioner is in doubt whether the treaty contemplated conferring upon the Commission such extended powers as those enumerated; that while Article I of the Treaty of 1889 gives an "exclusive" jurisdiction to the Commission over all matters affecting the boundary line, the following Articles do not set forth the necessary procedure to carry it into effect, but in fact limits it; that in his opinion the instructions asked for in the "Horcon Ranch case" covers the most important points outlined above, but that he will forward the statements of the Mexican Commissioner to his Department with the request that they be considered in connection with the questions raised in the "Horcon Ranch Case" proceedings, pages 11 and 12 of the record in that case, if his Department deems it expedient.*

The Commission then adjourned.

ANSON MILLS.

WILBUR KEBLINGER.

FERNANDO BELTRÁN Y PUGA.

CÉSAR CANSECO.

El Comisionado americano no se siente seguro de que en el Tratado de 1889 se haya intentado conferir á la Comisión poderes tan extensos como son los enumerados, pues, si bien el artículo I de dicho Tratado da á la Comisión una jurisdicción exclusiva sobre los asuntos que afecten á la línea limítrofe, los siguientes no establecen los procedimientos necesarios para hacer efectivo el primero, sino que, de hecho, lo limitan. En la opinión del mismo Comisionado, las instrucciones solicitadas en el acta final del caso del Horcón abarcan los principales puntos de los anteriores; pero, no obstante, enviará á su Departamento la presente exposición del Comisionado mexicano suplicando que, si así se estima conveniente, se la tome en consideración á la vez que se estudian las consultas formuladas en las actas del caso del Horcón, páginas 11 y 12 del expediente (americano) relativo.

En seguida se levantó la sesión.

FERNANDO BELTRÁN Y PUGA.

CÉSAR CANSECO.

ANSON MILLS.

WILBUR KEBLINGER.

April 20, 1907.

BRIGADIER GENERAL ANSON MILLS, U. S. A., *Retired*,

American Commissioner, International (Water) Boundary

Commission, United States and Mexico, Washington, D. C.

SIR: Referring to your letters of October 24th and November 5th and 8, 1906, in relation to the diversion of the waters of the Rio Grande by the American Rio Grande Land and Irrigation Company, near Horcon Ranch, I have now to inform you that those letters and their enclosures have been referred to the Attorney General, for his information, with the request that he give this Department his opinion as to whether the present statutory provisions enable the findings of your Commission to be given effect.

A copy of an opinion on the subject by the Solicitor for the Department of State is enclosed herewith, for your information. It is upon the recommendations made in the Solicitor's opinion that the Department has asked for the Attorney General's opinion.

I am, Sir, your obedient servant,

ROBERT BACON,

Acting Secretary.

Enclosure: Opinion of the Solicitor for the Department of State, April 10, 1907.

April 10, 1907.

DEAR MR. ADEE: The facts in the Horcon Ranch case appear to be as follows: The course of the Rio Grande near the Horcon Ranch forms two loops. The natural course of the water appeared to be about to form a cut off, whereby the

*See pages 21-22.

upper loop would have been eliminated. The result of this would have been to deprive American riparian proprietors abutting on the upper loop of the water which they had heretofore enjoyed for use and irrigation. To counteract the threatened danger, the American proprietors dug an artificial channel across the neck of the lower loop, and naturally depriving the Mexican riparian proprietors abutting on the lower loop of the water which they had heretofore been accustomed to use.

This so-called Horcon Cut Off was a clear violation of our treaties with Mexico, as will appear later, and has been found to be such by the International Water Boundary Commission. The Commission, however, feels uncertain as to the exact scope of its authority in the premises and the measures which it is empowered to take, in order to make reparation for the violation of treaty rights, and the injury to the Mexican property owners. The Commission has therefore agreed to report to the two governments and request instructions as to these points.

Subsequently, the Commissioners discussed the general questions involved in considering the jurisdiction of the Commission, and agreed to request their respective governments to instruct them specifically as to the powers of the Commission according to the treaties:

- (a) "To restrain the contemplated violation of the treaty by private individuals or corporations;
- (b) "To punish for a violation already committed;
- (c) "To award damages to persons injured by the violation; and
- (d) "To regulate the use of water for irrigating purposes and, if so, to what extent."

The American Commissioner noted that the instructions asked for in the Horcon Ranch case covered substantially the questions now submitted, but consented to forward these questions to be considered by the Department in connection with that case, if the Department should so desire. In order to give any adequate answer to the questions propounded by the Commissioners, and involved in the Horcon Ranch case now pending before them, it will be necessary to consider in some detail the treaty provisions between the United States and Mexico, governing the Rio Grande as an international boundary line.

Article VII of the treaty of Guadalupe-Hidalgo provides as follows:

The river Gila, and the part of the Rio Bravo del Norte lying below the southern boundary of New Mexico, being, agreeably to the fifth Article, divided in the middle of the Bravo below said boundary shall be free and common to the vessels and citizens of both countries; and neither shall, without the consent of the other, construct any work that may impede or interrupt, in whole or in part, the exercise of this right; not even for the purpose of favoring new methods of Navigation. * * * * * The Gadsden Treaty of 1853, Article IV, modifies the terms of Article VII of the Treaty of Guadalupe-Hidalgo to conform to the new boundary line established by the latter treaty. It provides, however, that the provisions of Article VII shall remain in force as applicable to that portion of the Rio Grande which remains international boundary line.

Article III of the Boundary Convention of 1884 contains the following provision:

No artificial change in the navigable course of the river, by building jetties, piers or obstructions which may tend to deflect the current or produce deposits

of alluvium, or by dredging to deepen another than the original channel under the treaty, when there is more than one channel, or by cutting waterways to shorten the navigable distance, shall be permitted to affect or alter the dividing line as determined by Article I hereof and under the reservation therein contained; but the protection of the banks on either side from erosion by revetments of stone or other material not unduly projecting into the current of the river shall not be deemed an artificial change.

It will be noted that while this Article specifically provides that no artificial change resulting from the constructing of jetties, piers, etc., shall be permitted to alter the boundary line between the United States and Mexico, and while the clear inference from the article is that such jetties and piers and obstructions as would tend to alter the course of the river are prohibited, there is no express prohibition of such constructions. The meaning of Article III, however, is made perfectly clear when considered in connection with Article V of the Boundary Convention of 1889, which refers to "work * * constructed, in either of those rivers, such as are prohibited by Article III of the convention of November 12, 1884, * * ." This gives us an authoritative interpretation of the meaning of Article III, *supra*.

Returning again to the boundary convention of 1889, we find the following pertinent provisions:

All differences or questions that may arise on that portion of the frontier between the United States of America and the United States of Mexico where the Colorado and the Rio Grande Rivers form the boundary line, whether such differences or questions in the bed of the aforesaid Rio Grande and that of the Colorado River, or of works that may be constructed in said rivers, or of any other cause affecting the boundary line, shall be submitted for examination and decision to an International Boundary Commission, which shall have exclusive jurisdiction in the case of said differences or questions.

When owing to natural causes, any change shall take place in the bed of the Rio Grande or in that of the Colorado River, in that portion thereof wherein those rivers form the boundary line between the two countries, which may affect the boundary line, notice of that fact shall be given by the proper local authorities on both sides to their respective Commissioners of the International Boundary Commission, on receiving such notice it shall be the duty of the said Commission to repair to the place where the change has taken place or the question has arisen, to make a personal examination of such change, to compare it with the bed of the river, as it was before the change took place, as shown by the surveys and to decide whether it has occurred through avulsion or erosion, for the effects of Articles I and II of the convention of November 12, 1884; having done this it shall make suitable annotations on the surveys of the boundary line.

Article V, already referred to, reads in full as follows:

Whenever the local authorities on any point of the frontier between the United States of America and the United States of Mexico, in that portion in which the Rio Grande and the Colorado River form the boundary line between the two countries, shall think that works are being constructed, in either of those rivers, such as are prohibited by Article III of the Convention of November 12, 1884, or by Article VII of the treaty of Guadalupe-Hidalgo of February 2, 1848, they shall so notify their respective Commissioners, in order that the latter may at once submit the matter to the International Boundary Commission, and that said

Commission may proceed, in accordance with the provisions of the foregoing article, to decide whether the work is among the number of those which are permitted, or of those which are prohibited by the stipulations of those treaties.

The Commission may provisionally suspend the construction of the works in question pending the investigation of the matter, and if it shall fail to agree on this point, the works shall be suspended, at the instance of one of the two Governments.

It is therefore seen that the so-called Horcon Cut-off amounts to a "waterway to shorten the navigable distance" forbidden by Article III, of the convention of 1889.

It also appears that by Article I of the latter convention, any question concerning this cut-off being one which "grows out of alterations * in the bed of the Δ Rio Grande and also of works * constructed in said river," is therefore one proper to be submitted for examination to the International Boundary Commission, which has "exclusive jurisdiction" over such cases.

Finally, inasmuch as it is specifically provided that the Commission may suspend the construction of any work pending its examination, it would have been within the competence of the Commission to suspend work upon the Horcon Cut-off had the Commission passed upon the acts before the work was completed.

The question now arises as to the authority of the Commission after having pronounced the cut-off a violation of the treaty to proceed to give redress for such violation.

It would seem that the treaty provides no method whereby the decisions of the Commission could be enforced except through an appeal to the ordinary judicial process providing for vindicating rights secured by treaty.

In other words, the boundary convention of 1889 has set up a special commission with authority to decide a certain kind of question. Once this Commission has decided a question, as it were, in the convention, and is entitled to the sanction of any other treaty provision, and anyone violating it or refusing to obey any order made by the Commission within its jurisdiction, is in the position of refusing to recognize rights secured by treaty, and is liable to the regular processes of the law for securing redress in such a case, but the treaty provides no method whereby the Commission itself may execute its decisions. In the present instance, the Commission has pronounced the Horcon Cut-off a violation of the treaty. Its decision in this respect is by Article I made exclusive, and it would seem conclusive. It remains for the Government or private parties interested to sue upon this decision in the proper Federal or State Courts, very much as suit may be brought upon a judgment.

* * *

J. B. S.

DEPARTMENT OF STATE, WASHINGTON, July 26, 1907.

BRIEFER GENERAL ANSON MILLS, U. S. A., Retired.

American Member of the International (Water) Boundary

Commission, United States and Mexico, Washington, D. C.

SIR: I enclose herewith, for your information, pages 250 to 254, inclusive, of the advance sheets of the "Opinions of the Attorney General," containing a copy of Attorney General Bonaparte's letter of May 16th last, giving his opinion as to whether the present statutory provisions enable the findings of your Commission to be given effect, in the matter of diversion, near Horcon Ranch, of the waters of the Rio Grande by the American Rio Grande Land and Irrigation Company.

I also enclose herewith, for your confidential information, a copy of the Department's letter to the Attorney General, of the 22d ultimo, expressing the opinion that it is desirable to institute and maintain a suit against the offending corporation, to compel the restoration of the river channel as it was.

I am, Sir, your obedient servant,

ROBERT BACON,
Acting Secretary.

MEXICAN BOUNDARY—DIVERSION OF THE RIO GRANDE.

The authority of the International Water Boundary Commission, under the convention of 1889 (26 Stat., 1512) with Mexico, is restricted to the determination of questions respecting the boundary alone, and does not extend to the adjudication of private rights and liabilities.

The Commission having found that the American Rio Grande Land and Irrigation Company, by the construction of its works, which changed the channel of the Rio Grande at a point forming the boundary line between the United States and Mexico, violated the stipulations of that treaty, the judgment is binding upon both countries, and the Commission is *functus officio* as regards the carrying into effect of their decision.

The Federal statutes (sec. 563, Rev. Stat., and act of August 13, 1888, sec. 1; 25 Stat., 433) provide a right of action and a forum to citizens of Mexico who have been injured by the action of the irrigation company.

It is the duty of the United States to vindicate the injury done to Mexico regarding the boundary line, and to that end the United States may proceed by bill in equity to obtain mandatory relief in some appropriate form to compel the restoration of the *status quo ante*.

Opinion of Attorney General Harmon (21 Op., 274) distinguished.

DEPARTMENT OF JUSTICE, May 16, 1907.

SIR: Your letter of April 20th submits certain findings of the International Water Boundary Commission, and requests my opinion as to whether or not the present statutory provisions enable the findings of the Commission to be given effect.

The Commission investigated a complaint by the Mexican authorities in relation to the diversion of the waters of the Rio Grande by the American Rio Grande Land and Irrigation Company on the American side near Horcon Ranch, Mexico, and found:

"That the said American Rio Grande Land and Irrigation Company did wrongfully and knowingly cause a change in the current channel of the Rio Grande where it constituted the boundary line between the United States of Mexico and the United States of America, by artificial means, and in direct violation of Article III of the convention of November 12, 1884, between the two governments, and if said Article III is applied, the change in the running channel of the river produces no alteration of the boundary line, which still continues in the old bed of the river.

"The Commissioners are of opinion that indemnity should be made for this wrong, but they do not understand that the treaties under which it was organized and under which this investigation was conducted confers upon it jurisdiction over the title to land, damage to property, the control of riparian rights, or the enforcing of reparation for wrongs by offenders for changing the channel of the river where it constitutes the boundary."

The boundary convention of 1889 with Mexico gives to the International Boundary Commission exclusive jurisdiction to decide the differences and questions growing out of natural or artificial changes in the beds of the Rio Grande and Colorado rivers where they form the boundary line between the United States and

Mexico. The authority of the Commission under that treaty is restricted to the determination of questions respecting the boundary alone, and does not extend to the adjudication of private rights and liabilities. The Commission has found here, within its jurisdiction, that the American Rio Grande Land and Irrigation Company, by the construction of its works changing the channel of the river, violated the stipulations of that treaty, which refers to and incorporates the stipulations of earlier treaties.

Both Commissioners having agreed to this finding or decision, their judgment is binding upon both countries by the express provision of Article VIII of that treaty. Manifestly the Commission is *functus officio* in this matter, and the question is, how can their decision be carried into effect?

The question of suspending the construction of prohibited works, which is authorized and directed by the treaty, does not arise here, because it appears from the report of the joint engineers that the work had progressed so far as to be beyond control.

As to indemnity for injuries which may have been caused to citizens of Mexico, I am of opinion that existing statutes provide a right of action and a forum. Section 563, Revised Statutes, clause 16, gives to district courts of the United States jurisdiction "of all suits brought by any alien for a tort only in violation of the law of nations or of a treaty of the United States." The act of August 13, 1888, amending and superseding earlier laws (25 Stat., 433, sec. 1), gives to the circuit courts of the United States "original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law or in equity * * * in which there shall be * * * a controversy between citizens of a State and foreign states, citizens, or subjects, in which the matter in dispute exceeds, exclusive of interest and costs, the sum or value aforesaid [\$2,000]."

I repeat that the statutes thus provide a forum and a right of action. I can not, of course, undertake to say whether or not a suit under either of the foregoing statutes would be successful. That would depend upon whether the diversion of the water was an injury to substantial rights of citizens of Mexico under the principles of international law or by treaty, and could only be determined by judicial decision. In a case where the diversion of water for irrigation occurred within the United States above the point where the Rio Grande becomes the international boundary, Attorney General Harmon held that the United States is under no obligation or liability by treaty or the principles of international law, but he did not consider a diversion, as here, where the river is the boundary, nor the liability of private parties in such case.

As to the public tort, so to speak—that is, the injury to Mexico in respect to the boundary line by changing the channel of the river—I incline to the view that a treaty of the United States, which is part of the supreme law of the land, having been violated, a remedy exists to redress that wrong. The United States owes the duty and has the right of vindicating the treaty. It can hardly be doubted that in a proper case calling for prevention the United States may proceed by bill in equity to obtain an injunction, and that in a case like the present, where the prohibited thing has been done, the United States may proceed in the same way to obtain mandatory relief in some appropriate form to compel the restoration of the *status quo ante*. I find provision for this course in the act of 1888, already referred to. That act gives jurisdiction to the circuit courts of the United States of all suits of a civil nature at common law or in equity in which the United States are plaintiffs or

petitioners. I am of the opinion that the limitation of jurisdictional amount in that act does not apply to such suits.

Whether, in view of all the circumstances and the effect upon the various Mexican as well as American interests involved, it is wise or expedient for the United States to file a bill against the offending corporation to compel the restoration of the river channel as it was is not a matter for me to determine, although it is undoubtedly that the question whether legal proceedings should actually be undertaken is finally referable to me. Awaiting an expression of your views upon this point, I have the honor to remain.

Very respectfully,

CHARLES J. BONAPARTE.

THE SECRETARY OF STATE.

June 22, 1907.

THE HONORABLE, THE ATTORNEY GENERAL.

SIR: I have the honor to acknowledge the receipt of your letter of the 16th ultimo, giving your opinion as to whether the present statutory provisions enable the findings of the International (Water) Boundary Commission, United States and Mexico, to be given effect, in the matter of the diversion, near Horcon Ranch, of the waters of the Rio Grande by the American Rio Grande Land and Irrigation Company.

In reply I have the honor to say that, under all the circumstances, the Secretary of State is of the opinion that it is desirable to institute and maintain a suit against the offending corporation to compel the restoration of the river channel as it was. The magnitude of the pecuniary interests involved appears to the Secretary of State to be quite unimportant as compared with the observance of good faith on the part of the United States and the public evidence that will be given of the purpose of the Government to insist upon the observance by citizens of the United States of the treaty with Mexico as a part of the supreme law of the land.

I have the honor to be, Sir, your obedient servant,

ALVEY A. ADEE,

Acting Secretary.

At the request of the Department of State the Department of Justice, through the United States Attorney for the Southern District of Texas, brought a suit in equity against the American Rio Grande Land and Irrigation Company in the United States Circuit Court for the Southern District of Texas, and on the 5th day of December, 1911, the court decreed, first, that the defendant company should transfer to the Mexican complainants all of the land cut-off by the unlawful diversion; second, that the defendants pay to the Mexican complainants the sum of five thousand (\$5,000.00) dollars for the damages occasioned to all the Mexican owners; third, that the defendant pay to the United States two thousand (\$2,000.00) dollars to cover cost and expenses incident to surveying and marking the international boundary in the old river bed; and fourth, that as a penalty for violating the treaties the defendant pay to the United States the sum of ten thousand (\$10,000.00) dollars.

A copy of the bill, answer and decree follow:

BILL

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND
FOR THE SOUTHERN DISTRICT OF TEXAS,
BROWNSVILLE DIVISION.

IN EQUITY. No. 41.

THE UNITED STATES OF AMERICA, ET ALS., *Complainant,*

vs.

THE AMERICAN RIO GRANDE LAND & IRRIGATION COMPANY, *Defendant.*

To the Honorable Judges of said Court:

I.

Come the United States of America, through Lock McDaniel, Esq., United States Attorney for the Southern District of Texas, by and at the direction of the Attorney General of the United States; and also comes Señor Don Adelberto A. Arguelles, Trustee, a resident and citizen of the City of H. Matamoros, in the State of Tamaulipas, and Republic of Mexico, joining herein as complainant, the United States of America consenting thereto, in full and general representation of all of the rights, interests, claims and demands of all citizens of the Republic of Mexico, and of all claimants and owners of the lands and properties situated in Mexico claimed to have suffered damage, he being thereunto duly authorized and designated so to act, and especially empowered to receive, distribute and convey, as such trustee, full title to and possession of any award of damages, either in land or money, or both, which may be adjudged to him as Trustee complainant herein, said Trustee being the representative in particular of the following named persons, claimants and owners of land claimed to have been damaged, they being residents and citizens of the State of Tamaulipas, Republic of Mexico, to wit: Lic. Joaquin Arguelles, Lic. Jose Arguelles, Señorita Consuelo Arguelles, Don Manuel Cantu and Señores Desiderio Cantu, Ignacio Cantu, Emilio Zamora, Felicitas Garcia, Primitivo Hinojosa, Reducindo Olivares, Geronimo Bazan, Ignacio Castañeda, Jorge Cantu, Julian Cantu, Natividad Cantu, Jose Angel Hernandez, Santos Cantu, Baltazar Lopez, and the Señoras Manuela Garza Viuda de Cantu, Petra Cisneros Viuda de Hinojosa, Francisca Fraustra Viuda de Bazan, Antonia Rodriguez Viuda de Cantu, and Antonia Garza Viuda de Hernandez, and brings this their bill against the American Rio Grande Land & Irrigation Company, a corporation, organized under and by virtue of the laws of the State of

Texas, having its office and principal place of business at the town of Mercedes, in Hidalgo County, Texas, in said Southern District, of which Company John F. Shepley, a resident of St. Louis, Missouri, is the President, and upon whom service of subpoena may be had; and for cause of complaint your orator respectfully represents:

II.

That defendant is the owner and in possession of a large tract of land situated in Hidalgo and Cameron Counties, Texas, comprising fifty thousand acres, more or less, called the CapiSallo Land District, being parts of those original Spanish grants designated as the "Llano Grande" now in Hidalgo County, Texas, and the "La Feria," now in Cameron County, Texas, situated in said Southern District of Texas. That said CapiSallo Land District has for its Southern boundary the Rio Grande River, which river also forms the International Territorial boundary line between the United States of America and the United States of Mexico. That a map of said CapiSallo Land District is attached hereto, marked "Exhibit A," and prayed to be taken and considered as a part hereof.

III.

That it is defendant's purpose to develop, cultivate and utilize its lands by the establishment of an extensive system of irrigation, and to that end has cleared its lands, built canals, reservoirs, roads, towns, bridges, a complete electrical power station and constructed on the bank of the Rio Grande River, in Hidalgo County, Texas, in the "Llano Grande" Grant, and within the said CapiSallo Land District at the site so marked and shown on "Exhibit A" a pumping station, and there installed very powerful engines, together with mechanical appliances necessary to draw and lift into its canal system from the Rio Grande such quantities of water as are desirous for irrigation.

IV.

That during the months of June and July, 1906, the defendant Company, and its servants, agents and employes, they then and there acting with the knowledge and approval of the defendant, did wrongfully, unlawfully and knowingly, by artificial means, cause a diversion and change to be made in the current channel of the Rio Grande where it constituted the boundary line between the United States of Mexico and the United States of America, some hundreds of yards below the site of the pumping station, at that point in Hidalgo County, Texas, in said CapiSallo Land District, shown and indicated on the map drawn by W. W. Follett, Consulting Engineer to the International (Water) Boun-

dary Commission, hereto attached, marked "Exhibit B" and prayed to be taken and considered as a part hereof, such diversion and change being contrary to the provisions of existing treaties between the said United States of America and the said United States of Mexico, particularly being contrary and in violation of the provisions of Article III of the Boundary Convention Treaty between the two said Governments, concluded November 12, 1884, as follows, to wit:

"Art. III. No artificial change in the navigable course of the river, by building jetties, piers, or obstructions which may tend to deflect the current or produce deposits of alluvium, or by dredging to deepen another than the original channel under the Treaty when there is more than one channel, or by cutting waterways to shorten the navigable distance, shall be permitted to affect or alter the dividing line as determined by the aforesaid Commissions in 1852 or as determined by Article I hereof and under the reservation therein contained; but the protection of the banks on either side from erosion by revetments of stone or other material not unduly projecting into the current of the river shall not be deemed an artificial change."

And particularly being contrary to and in violation of Article V of the Boundary Convention Treaty between the two said Governments, concluded March 1, 1889, as follows, to wit:

"Art. V. Whenever the local authorities on any point of the frontier between the United States of America and the United States of Mexico, in that portion in which the Rio Grande and the Colorado River form the boundary between the two countries, shall think that works are being constructed, in either of those rivers, such as are prohibited by Article III of the Convention of November 12, 1884, or by Article VII of the Treaty of Guadalupe Hidalgo of February 2, 1848, they shall so notify their respective Commissioners in order that the latter may at once submit the matter to the International Boundary Commission, and that said Commission may proceed, in accordance with the provisions of the foregoing article, to examine the case, and that it may decide whether the work is among the number of those which are permitted, or of those which are prohibited by the stipulations of those treaties.

The Commission may provisionally suspend the construction of the works in question pending the investigation of the matter, and if it shall fail to agree on this point, the works shall be suspended at the instance of one of the two Governments."

And likewise contrary to the Statutes and to International Law. That such wrongful and unlawful diversion and change in the channel of said Rio Grande by defendant, aforesaid, forming as it then did the natural boundary line between the two said countries, established and

fixed by treaty, even though the boundary itself be not thereby changed, constitutes an act in contempt and in violation of the sovereign authority and power of the two said Governments and distinctly violative of their treaties and the statutes, having been so declared and found by the International (Water) Boundary Commission, after due hearing as provided by Articles VII and VIII of the International Boundary Convention of 1889, as shown by the following extract from said findings:

“ * * * That the American Rio Grande Land and Irrigation Company did wrongfully and knowingly cause a change in the current channel of the Rio Grande where it constituted the boundary line between the United States of American by artificial means and in direct violation of Article III of the Convention of November 12, 1884, between the two Governments, and if said Article III is applied, the change in the running channel of the river produces no alternative of the boundary line, which still continues in the old bed of the river.

The Commissioners are of opinion that indemnity should be made for this wrong, but they do not understand that the treaties under which this investigation was conducted confers upon it jurisdiction over the title of the land, damage to property, the control of riparian rights, or the enforcing of reparation for wrongs by offenders for changing the channel of the river where it constitutes the boundary.”

Which said finding and the Journal of the International Boundary Commission, certified copy of which is attached hereto, and marked Exhibit “C,” No. 1163—“C” No. 1164, and prayed to be taken and considered as part hereof.

VI.*

That by virtue of the terms and effect of existing treaties the two said Governments, and particularly the Government of the United States of America, complainant, became obligated, and all persons, corporations and inhabitants within its territorial limits, particularly the American Rio Grande Land and Irrigation Company, defendant, became similarly obligated, to vindicate, maintain, and continue in full force and effect each and every provision, duty, obligation and requirement set out or implied in the said existing treaties. That by the force and effect of law and the said treaties, complainant, the United States of America, and the said defendant became especially obligated to recognize and maintain the Rio Grande as the boundary line between the two countries, as in the treaties declared; but with wilful and reckless disregard thereof the said defendant did, during the months of June and July, 1906, as aforesaid,

*Attention is called to fact that in certified copy this section is numbered VI, there being no number V.

wrongfully and unlawfully cause to be excavated a certain canal or trench and caused to be diverted into said channel the natural course and the entire body of the waterflow of the Rio Grande, thus artificially conducting same over the lands of defendant for a distance of about eighteen hundred feet, across the neck of a long bend in said river, creating a new river bed at that point several hundred yards below the pumping station, as shown on the said map of Engineer Follett, being Exhibit "B," thereby changing the course of the established and fixed natural international boundary line and thus violating its duty to maintain said natural line as required by the treaties; and as a result of its said wrongful and unlawful acts, as aforesaid, did inflict injury and damage to the United States of America, complainant, and to Señor Don Adelberto A. Arguelles, Trustee, co-complainant for the claimants and owners of the lands opposite the point of said diversion situated within the territorial limits of the United States of Mexico and State of Tamaulipas, in the following particulars, to wit:

(1) To growing crops. (2) Expenses of constructing levees. (3) Loss of land from erosion. (4) Loss of riparian rights. Which said damages reasonably aggregate the sum of five thousand dollars.

The various particular items thereof are set out and appear in the report of W. W. Follett, Consulting Engineer of the International (Water) Boundary Commission, dated March 3, 1908, a certified copy of which is attached hereto, marked "Exhibit D," No. 1198, and prayed to be taken and considered as a part hereof.

VII.

In recognition of the obligations and duties imposed upon complainant, the United States of America, by its treaties with the United States of Mexico, and particularly its obligation to maintain the fixed international boundary line, to wit: The Rio Grande in its natural course and position, and because of its wrongful and unlawful change and diversion in the course and current of the entire flow of the water of said river by said defendant company hereinbefore specifically charged; to the end that it may obtain the relief to which it is justly entitled in the premises, complainants pray the Court:

FIRST.

To grant your writ of subpoena directed to the said defendant, the American Rio Grande Land and Irrigation Company, requiring and commanding it to appear herein and to make full, true, and complete answer, but not under oath, to the several allegations herein contained.

SECOND.

That the Court, by proper decree, compel the defendant, the American Rio Grande Land and Irrigation Company, to restore to its original bed, course and channel the entire current and flow of water of the Rio Grande, so diverted as aforesaid, as well as in all other particulars to make restoration of the status *quo ante*, as nearly as it may be as it existed at and before the time of the wrongful and unlawful diversion of the waters charged as aforesaid.

THIRD.

In the alternative, that if it should appear to the Court that it is practically impossible to make such restoration, then to indemnify and compensate the co-complainant, Señor Don Adelberto A. Arguelles, Trustee, for all of the owners of Mexican lands who have been damaged by reason of the wrongful and unlawful acts of defendant, as aforesaid:

(1) That defendant be required to convey to complainant, Señor Don Adelberto A. Arguelles, Trustee, by delivery of its warranty deed, for the benefit of all of said owners of Mexican lands so damaged, all that tract or parcel of land belonging to said defendant company that was "cut-off," or cast upon the southern banks of the Rio Grande by said wrongful acts of the defendant, as shown on said Exhibit "B" and designated "U. S. Soil."

(2) That defendant be adjudged to pay to complainant, Señor Don Adelberto A. Arguelles, Trustee, the sum of five thousand dollars for the benefit of all of said owners of Mexican lands so damaged, as hereinbefore specified, as full compensation and settlement therefor.

(3) That defendant be adjudged to pay to complainant, the United States of America, the sum of two thousand (\$2,000) dollars to cover costs and expense incident to surveying and marking the international boundary line now represented by the former bed or channel of the Rio Grande before the unlawful diversion of the stream was made by defendant, as aforesaid.

(4) That as a penalty for violating the provisions of the treaties, as aforesaid, in making, by artificial means, the unlawful change, diversion and interference with the natural channel, course and flow of the waters of the International boundary line stream, the Rio Grande, by reason of the wrongful acts complained of, the defendant company be adjudged to pay to complainant, the United States of America, the sum of not less than ten thousand (\$10,000) dollars, or such further sum as the Court in its discretion may see fit to decree.

That complainant have such other and further relief as to the Court may seem meet and proper and which equity may require, and for costs.

LOCK McDANIEL,
*United States Attorney for the
United States of America.*

A. A. ARGUELLES,
*Trustee for all of the claimants and
owners of lands in Mexico claimed
to have been damaged by defendant.*

R. E. HOLLAND,
Attorney for Co-Complainant Trustee.

EXHIBIT "A."*

Map of the
CAPISALLO DISTRICT
of the LANDS of the
AMERICAN RIO GRANDE LAND and IRRIGATION COMPANY
situated in
HIDALGO and CAMERON COUNTIES,
TEXAS.

*Not printed.

EXHIBIT "B."*

Map showing the natural course of the Rio Grande and Cut-off;
"To accompany Report of March 3, 1908, on 'Damages in Horcon Rancho
Case.'"

A true copy,

ANSON MILLS,
Commissioner.

Attest:

WILBUR KEBLINGER,
Secretary.

*Map attached to last page is practically the same.

JOURNAL OF THE INTERNATIONAL BOUNDARY COMMISSION.

Exhibit C. No. 1163.

UNITED STATES OF AMERICA.

DEPARTMENT OF STATE.

To All to Whom These Presents Shall Come, Greeting:

I certify that the documents hereto annexed are true copies from the files and records of this Department.*

(Seal) In testimony whereof I, P. C. Knox, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my name to be subscribed by the Chief of the Bureau of Citizenship of the said Department, at the City of Washington, this 2nd day of August, 1909.

P. C. KNOX,
Secretary of State.

By R. W. FLOURNOY, JR.,
Chief, Bureau of Citizenship.

[See pages 3 to 5 and 9 to 22.]

JOURNAL OF THE INTERNATIONAL BOUNDARY COMMISSION.

Exhibit C. No. 1164.

UNITED STATES OF AMERICA.

DEPARTMENT OF STATE.

To All to Whom These Presents Shall Come, Greeting:

I certify that the document hereto annexed is a true copy from the files of this Department.*

(Seal) In testimony whereof I, P. C. Knox, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my name to be subscribed by the Chief of the Bureau of Citizenship of the said Department, at the City of Washington, this 2nd day of August, 1909.

P. C. KNOX,
Secretary of State.

By R. W. FLOURNOY, JR.,
Chief, Bureau of Citizenship.

*For the contents of the annexed document the Department assumes no responsibility.

DEPARTMENT OF STATE.

INTERNATIONAL (WATER) BOUNDARY COMMISSION, UNITED STATES AND MEXICO.

EL PASO, TEXAS, December 11, 1907.

The Honorable The Secretary of State, Washington, D. C.

SIR: I have the honor to transmit herewith Joint Journal, in Spanish and English, of December 10, 1907, wherein the Mexican Commissioner states that the parties in interest in the "Horcon Ranch Case" are again complaining that no action has as yet been taken by the two governments to make redress for the injury sustained by them by reason of the change in the course of the Rio Grande made by the American Rio Grande Land and Irrigation Company and requests that the Commission call the attention of the two governments to the matter, to the end that proper action be taken in the premises.

I have the honor to be, sir,

Very respectfully,

Your obedient servant,

ANSON MILLS,

American Commissioner.

EL PASO, TEXAS, December 10, 1907.

The Joint Commission met at the office of the Mexican Commissioner at 10 o'clock A. M.

The Mexican Commissioner stated that he had received a communication from his Government in connection with the Horcon Ranch Case from which it appeared that the local authorities and the parties in interest are complaining again that no action had been taken by the two Governments to give redress for the injury and damages sustained by them by reason of the change made in the course of the Rio Grande by the American Rio Grande Land and Irrigation Company; that the decision of the Commission was to be assumed as approved as no notice of disapproval had been received within the thirty days specified by the treaty; that as he had no official notice of any action having been taken in this case he requested that the American Commissioner join him in respectfully requesting the two Governments to take the matter up with a view of some proper action in the premises, as he considered it very important that the decisions of the Commission be executed as promptly as practicable as such delays seriously affected the prestige of the Commission along the border and its usefulness to the two Governments.

To which the American Commissioner replied that he had been officially informed that steps were being taken by his Department, through the Department of Justice, to put into effect the decision and recommendations of the Joint Commission in the Horcon Ranch Case, and in view of the fact that these new complaints are covered by our former decision in this case (Joint Journal of October 24, 1906), he felt that he could do nothing further than call the attention of his Department to this new incident in the matter.

The Mexican Commissioner replied that he was satisfied with the assurance of the American Commissioner that action was being taken by his Government in the Horcon Ranch Case and that his intention to call the attention of his Department to the recent complaints in the case was also agreeable to him.

The Commission then proceeded to other business.

ANSON MILLS,
WILBUR KEBLINGER,

F. B. PUGA,
CESAR CANSECO.

Exhibit D. No. 1198. Report of Engineer Follett.

UNITED STATES OF AMERICA.

DEPARTMENT OF STATE.

To all to Whom These Presents Shall Come, Greeting:

I Certify That the document hereto annexed is a true copy from the files and records of this Department.*

In testimony whereof I, C. P. Knox, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my
(Seal) name to be subscribed by the Chief of the Bureau of Citizenship of the said Department, at the City of Washington, this 3rd day of August, 1909.

P. C. KNOX,
Secretary of State.

By R. W. FLOURNOY, JR.,
Chief, Bureau of Citizenship.

*For the contents of the annexed document the Department assumes no responsibility.

M/D
Copy.

EXHIBIT D.

DEPARTMENT OF STATE.

INTERNATIONAL (WATER) BOUNDARY COMMISSION, UNITED STATES AND MEXICO.

Treaties of 1884 and 1889.

Damages in "Horcon Ranch Case."

EL PASO, TEXAS, March 3, 1908.

General Anson Mills,
Commissioner,
Washington, D. C.

DEAR GENERAL:

I beg to acknowledge receipt of your letter of February 14th stating that the Department wished me to furnish a report as to the actual damages suffered by the Mexican land owners from the Horcon Cutoff.

I have the honor of submitting the following report:

After receiving your letter I visited the lands in question in order to fully inform myself as to the conditions there existing. This could not be done on former visits, owing to the flood conditions of the country.

I attach hereto a map on scale of 1:20000 which shows the Mexican ranches involved. These are, in their order, Cipres, La Leona, La Union, Horcon, La Bolsa, Sabinito, Palmita, Sierra Mojada and La Palma. These are all small collections of jacales, except La Palma, which is of more importance but was, apparently, not much affected by the Cutoff.

Positas ranch at the upper end is not included, as it was materially benefited by the change.

The damage resulting from the cutting, in July, 1906, of the Horcon bend by the American Rio Grande Land and Irrigation Company, may be classed under five heads, as follows:

- 1st. Damage to growing crops when the Cutoff was made.
- 2nd. Damage due to the cost of leveeing to keep water away from buildings.
- 3rd. Damage caused by the eroding away of land.
- 4th. Permanent damage due to increased overflow.
- 5th. Damage due to loss of river frontage.

1st. Damage to Growing Crops.

In July, 1906, the river rose quite suddenly, jumping from gauge 4.7 at Matamoros, on July 4th, to 13.1 on July 11th.

The general overflow stage was reached at about 12 ft. or a little less. The river remained above 13 ft. until Sept. 15th. The length of the flood was unprecedented, and it came earlier in the season than usual. It was also higher than ever before. The highest Matamoros record prior to 1906 was 13.5 in July, 1905. During the 1906 flood it reached 14.2, and was 14.0 or over 44 days during the overflow.

In my report of Sept 14th, 1906, to the Secretary of State, I stated that the cutting of this bend had probably increased the depth of overflow on the Horeon ranch lands somewhat, possibly six inches. Further investigation confirms this opinion, so far as it applies to 1906. Since then, the river has scoured out so that the flood plane is probably the same as before the cutoff. This six inches was on top of a flood which would have submerged all the cropping land of Horeon and neighboring ranches from one to three feet any way. This additional six inches could not have largely increased the damage which the flood would have caused without the cutoff. The rainfall here is not sufficient to raise a crop and the only land planted is that which overflows. The flood water soaks into the land and then a crop can be raised the next year. In 1905 there was only a short overflow, and the crop of 1906 was consequently poor and the area planted small. The July flood caught the crop, such as it was, partially unharvested, and a loss resulted. I cannot see, however, how this additional six inches could have materially added to the loss. In the Horeon, La Bolsa, and La Palma and intervening ranches, there was probably some 300 acres under cultivation. Five dollars per acre will easily cover the loss due to the extra six inches of overflow, or \$1,500.00 in all.

I will say that as a result of this long-continued overflow of 1906 a beautiful crop was raised in 1907. There was no overflow in 1907, so that this spring the land is dry and the outlook for a crop very poor.

2nd. Cost of Leveeing.

Around the Horeon and La Bolsa and intervening ranches small levees about one foot in height were thrown up to keep the water away from the houses. Probably \$200.00 would cover the cost of these. While our maps made in 1898 show these ranch buildings all above overflow, the levels showed that the ground was only 0.1 to 0.3 meters (4 to 12 inches) above the former flood planes. So that the 1906 flood (which was, as stated above, six inches above the highest former records at Matamoros) would have put the ground at the houses awash or under water without the cutoff. Still it is fair to charge this \$200.00 to the latter.

3rd. Damage from Eroding Land.

Owing to the faulty location of this cutoff, some land will be eroded away from the point below it. The maximum will be some 80 acres. Its value is probably \$20.00 per acre, or \$1,600.00 in all.

4th. Permanent Damage from Increased Overflow.

I do not believe that any such damage will result. The channel has scoured out so that future floods will have their normal range.

5th. Damage due to Loss of River Frontage.

Cipres, La Leona and La Union ranches are entirely deprived of river frontage and Horeon partially so. What this loss means in dollars and cents it is impossible to say. But it could be offset by treating the piece of land cut off as a lingo, transferring it to Mexico, and requiring the American Rio Grande Land and Irrigation Company to transfer title to the Mexican government, when it

could be divided among the ranches in such a way as to restore to each its river frontage. The total area of this "banco" is about 350 acres, measuring to the center of the old channel. Of this about 260 acres is fine land. At a valuation of \$20.00 per acre, it is worth \$5200.00. This is, in my opinion, much more than the value of the lost river frontage.

I took a picture of the main Horcon ranch buildings and show it on the next sheet. There are two other houses like these two and three other poorer jacals. Their total cost probably does not exceed \$500.00. When at the point where the picture was taken, I asked Mr. Cantu, who lived there, how deep the overflow of 1906 was in the road in front of his house, he replied "una vara y media"—four feet two inches. On Sept. 6th, 1906, I was at this place when the water was the highest and noted an overflow there of nine inches in the road. This was the maximum.

I thus make the total actual damage as follows:

1. Damage to growing crops.....	\$1500.00
2. Cost of leveeing.....	200.00
3. Damage from eroding land.....	1600.00
4. Permanent damage from increased overflow.....
5. Damage from loss of river frontage (to be compensated by transfer of land)
Total	\$3300.00
and the transfer of the land cut off, worth about.....	\$5200.00

I do not wish to be understood as saying that the loss of river frontage is worth \$5200.00 but that the transfer of this land, worth about that amount, will compensate the owners of the ranches involved for their loss.

Respectfully submitted,

(Signed) W. W. FOLLETT,
Consulting Engineer.

Endorsements: In Equity No. 41. In the Circuit Court of the United States for the Southern District of Texas, Brownsville Division. The United States of America, *et als.*, Complainants, vs. The American Rio Grande Land & Irrigation Company, Defendant. Bill in equity. Filed 13th day of Nov. 1911. C. Dart, Clerk, By Frank A. Creager, Deputy.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF TEXAS, AT BROWNSVILLE.

I, C. Dart, Clerk of the Circuit Court of the United States for the Southern District of Texas, in the Fifth Circuit and District aforesaid, do hereby certify the foregoing to be a true and correct copy of the original bill, except as to Exhibits "A" and "B" in cause No. 41 on the Equity Docket of said Court, entitled The United States of America *et als.* vs. The American Rio Grande Land and Irrigation Company, as the same now appears on file in my office.

To certify which, witness my hand and the seal of said court, at Brownsville, in said district, this the 30th day of December, A. D. 1911.

C. DART,

(Seal) *Clerk U. S. Circuit Court, Southern District of Texas.*

By FRANK A. CREAGER,
Deputy.

ANSWER

IN THE CIRCUIT COURT OF THE UNITED STATES, IN AND
FOR THE SOUTHERN DISTRICT OF TEXAS, BROWNS-
VILLE DIVISION.

IN EQUITY. No. 41.

THE UNITED STATES, ET ALS., *Complainants,*

vs.

THE AMERICAN RIO GRANDE LAND & IRRIGATION COMPANY, *Defendant.*

To the Honorable Judges of Said Court:

Now comes the American Rio Grande Land and Irrigation Company, defendant in the above entitled cause, and hereby expressly waiving the issuance of subpoena, and acknowledging service thereof, and makes this its answer to the complaint of the plaintiffs, the United States of America, and its co-complainant, Señor Don Adelberto A. Arguelles, Trustee, to wit:

The defendant, the American Rio Grande Land and Irrigation Company, admits the cause of action and all of the material facts stated in Complainants' bill and confesses judgment thereon; but touching the relief sought respectfully represents that it has now become practically impossible to restore the Rio Grande to its original bed or channel at the point of diversion, and prays the Court to enter its judgment and decree granting unto Complainants, the United States of America, and its Co-Complainant, Señor Don Adelberto A. Arguelles, Trustee, the relief sought in their alternative prayer, defendant agreeing to abide by and fully to carry same into effect.

(Signed) DUVAL WEST,
*Attorney for Defendant, American Rio Grande
Land & Irrigation Company.*

Endorsements: In Equity No. 41. In the Circuit Court of the United States for the Southern District of Texas, Brownsville Division. The United States of America *et als.*, Complainants, vs. The American Rio Grande Land & Irrigation Company, Defendant. Answer of Defendant. Filed Decr. 5, 1911. C. Dart, Clerk.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF TEXAS, AT BROWNSVILLE.

I, C. Dart, Clerk of the Circuit Court of the United States for the Southern District of Texas, in the Fifth Circuit and District aforesaid, do hereby certify the foregoing to be a true and correct copy of the original answer of defendant in cause No. 41 on the Equity Docket of said Court, entitled *The United States of America et als. vs. The American Rio Grande Land and Irrigation Company*, as the same now appears on file in my office.

To certify which, witness my hand and the seal of said Court, at Brownsville, in said District, this the 30th day of December, A. D. 1911.

C. DART,

(Seal) *Clerk U. S. Circuit Court, Southern District of Texas.*

By FRANK A. CREAGER,
Deputy.

DECREE

IN THE CIRCUIT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF TEXAS, BROWNSVILLE DIVISION.

IN EQUITY. No. 41.

THE UNITED STATES, ET ALS., *Complainants,*

vs.

THE AMERICAN RIO GRANDE LAND & IRRIGATION COMPANY, *Defendants.*

On this 5th day of December, 1911, at Brownsville, Texas, in said district, in open court, being a day of the regular term of said Court, came the United States of America, complainant, by its attorney, Lock McDaniel, for said Southern District, and its co-complainant, Señor Don Adelberto A. Arguelles, Trustee, by his attorney, R. E. Holland, and the American Rio Grande Land & Irrigation Company, defendant, by its attorney, DuVal West, Esq., and submitted said cause for hearing upon the complainants' bill and defendant's answer.

Upon due consideration thereof, it is ordered, adjudged, and decreed:

First.—That defendant, American Rio Grande Land & Irrigation Company, do convey to the complainant, Señor Don Adelberto A. Arguelles, Trustee, by warranty deed, for the benefit of all of the owners of lands situated in Mexico damaged by the unlawful diversion of the Rio Grande, all that tract or parcel of land belonging to said defendant company that was "cut-off" or cast upon the southern bank of the Rio Grande by said unlawful diversion, being situated in Hidalgo County, Texas, forming part of the Llano Grande grant of land and the Capisallo Land District, containing 246.56 acres, more or less, particularly described as follows:

Survey begins at a mesquite post marked "K," on the South bank of the Rio Grande, and near what was the West Bank of that River before the cut-off was made; said mesquite post lying in the Eastern portion, in the north extreme eastern portion of said Banco. Said post is connected with the Capisallo base line of said American Rio Grande Land & Irrigation Company by the following courses and distances:

Beginning at a point on said base line 1,405.93 ft. north of zero of the zero point, thence following the meanders of the North bank of the Rio Grande River by the courses and bearings, N. 78 de. 05' E. 826.09 ft. N. 67 de. 39½' E. 2099.58 ft. N. 63 de. 48½' E. 1305.24 ft. N. 68 de.

04' E. 1492.64 ft. N. 70 de. 190 $\frac{1}{2}$ ' E. 1178.22 ft. N. 77 de. 131 $\frac{1}{2}$ ' E. 322.80 ft. S. 81 de. 180 $\frac{1}{4}$ ' E. 1037.90 ft. S. 46 de. 07 $\frac{3}{4}$ ' E. 1206.52 ft. S. 83 de. 10 $\frac{1}{2}$ ' E. 325.06 ft. S. 4 de. 14' W. 520.71 ft. thus establishing the position of the mesquite post above described.

Now starting from said mesquite post as the point of beginning, and following the meanders of the old river bed the said Bank is bounded as follows:

South 30 de. 55' W. 1878.55 ft. S. 44 degrees 40' W. 717.00 ft. S. 56 de. 20 $\frac{1}{2}$ ' W. 845.74 ft. S. 64 de. 32 $\frac{1}{2}$ ' W. 551.43 ft. S. 77 de. 35 $\frac{3}{4}$ ' W. 1600.01 ft. S. 77 de. 29' W. 1699.99 ft. S. 77 de. 31 $\frac{1}{4}$ ' W. 815.60 ft. N. 75 de. 02' W. 588.68 ft. N. 5 de. 05 $\frac{3}{4}$ ' W. 1618.90 ft. N. 37 de. 23 $\frac{1}{4}$ ' E. 911.47 ft. N. 78 de. 06 $\frac{1}{4}$ ' E. 604.48 ft. S. 57 de. 19' E. 606.84 ft. S. 43 de. 55' E. 551.37 ft. S. 35 de. 09' E. 604.81 ft. N. 84 de. 22' E. 833.84 ft. S. 83 de. 22 $\frac{3}{4}$ ' E. 193.15 ft. N. 73 de. 38 $\frac{3}{4}$ ' E. 857.92 ft. N. 45 de. 33 $\frac{1}{2}$ ' E. 673.11 ft. N. 52 de. 01' E. 1355.12 ft. N. 27 de. 02' E. 529.09 ft. N. 9 de. 01 $\frac{1}{2}$ ' E. 705.50 ft.: to a point at the most northern point of this Banco on the southern bank of the said Rio Grande River. Thence with the meanders of the Rio Grande S. 61 de. 58 $\frac{3}{4}$ ' E. 437.98 ft. S. 67 de. 10 $\frac{1}{4}$ ' E. 302.18 Ft. S. 77 de. 57' E. 618.80 ft. to the place of beginning, containing in all 246.570 acres of land more or less.

All that portion of the land lying between the approximate said line of the old river bed as shown by the polygon NOPQRSTUUVWXY, and the circuit lines of the Banco above described and containing in all one hundred and twenty (120) acres of land more or less, making an aggregate total of 1366.57 acres.

Second.—That defendant, the American Rio Grande Land & Irrigation Company do pay unto the complainant, Señor Don Adelberto A. Arguelles, Trustee, Five Thousand Dollars for the benefit of all the owners of Mexican lands so damaged, and particularly for the benefit of: Lic. Joaquin Arguelles, Lic. Jose Arguelles, Senorita Consuelo Arguelles, Don Manuel Cantu and Senores Desiderio Cantu, Ignacio Cantu, Emilio Zamora, Felicitas Garcia, Primitivo Hinojosa, Reducindo Olivares, Geronimo Bazan, Ignacio Castaneda, Jorge Cantu, Julian Cantu, Natividad Cantu, Jose Angel Hernandez, Santos Cantu, Baltazar Lopes, and the Senoras Manuela Garza Viuda de Cantu, Petra Cisneros Viuda de Hinojosa, Francisca Fraustra Viuda de Bazan, Antonio Rodriguez Viuda de Cantu, and Antonio Garza Viuda de Hernandez. And that the said conveyance of said land and the said payment of said Five Thousand Dollars shall be and constitute a full liquidation and settlement of all damages occasioned to all of the owners of Mexican lands damaged by the unlawful acts of defendant, American Rio Grande Land & Irrigation Company.

Third.—That defendant, American Rio Grande Land & Irrigation Company, do pay to the United States of America, Complainants, the sum of Two Thousand (\$2,000) Dollars to cover costs and expenses incident to surveying and marking the international boundary line now represented by the former bed or channel of the Rio Grande before the unlawful diversion of the stream was made by defendant, as aforesaid.

Fourth.—That as a penalty for violating the provision of the treaties, as aforesaid, in making, by artificial means, the unlawful change, diversion and interference with the natural channel, course and flow of the waters of the international boundary line stream, the Rio Grande, by reason of the wrongful acts complained of, that the defendant company pay to complainant, the United States of America, the sum of Ten Thousand (\$10,000) Dollars and court costs in the sum of Two Hundred (\$200) Dollars.

W. T. BURNS,
Judge.

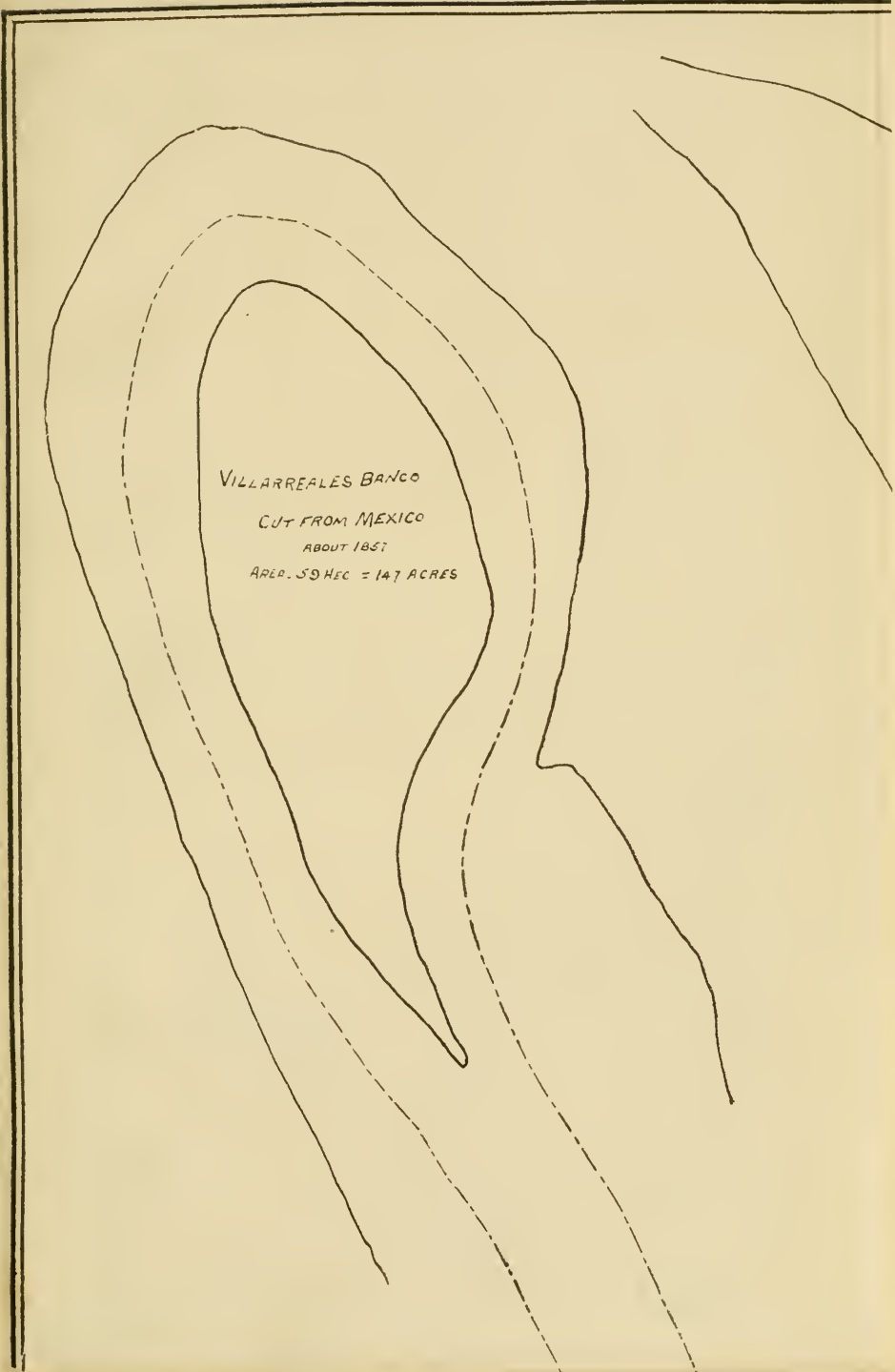
Endorsements: In Equity No. 41, in the Circuit Court of the United States for the Southern District of Texas, Brownsville Division. The United States of America, *et als.*, Complainants, vs. The American Rio Grande Land & Irrigation Company, Defendants. Final decree of court. Filed Decr. 5th, 1911. C. Dart, Clerk.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF TEXAS AT DECEMBER TERM.

I, C. Dart, Clerk of the Circuit Court of the United States for the Southern District of Texas, in the Fifth Circuit and District aforesaid, do hereby certify the foregoing to be a true and correct copy of final decree of court in cause No. 41 on the Equity Docket of said court, entitled The United States of America *et als.*, Complainants, vs. The American Rio Grande Land & Irrigation Company, Defendant, as the same now appears on file and of record on the minutes of said court in my office.

To certify which, witness my hand and the seal of said court, at Brownsville, in said district, this the 13th day of December, A. D. 1911.

(Seal) C DART,
Clerk U. S. Circuit Court, Southern District of Texas.

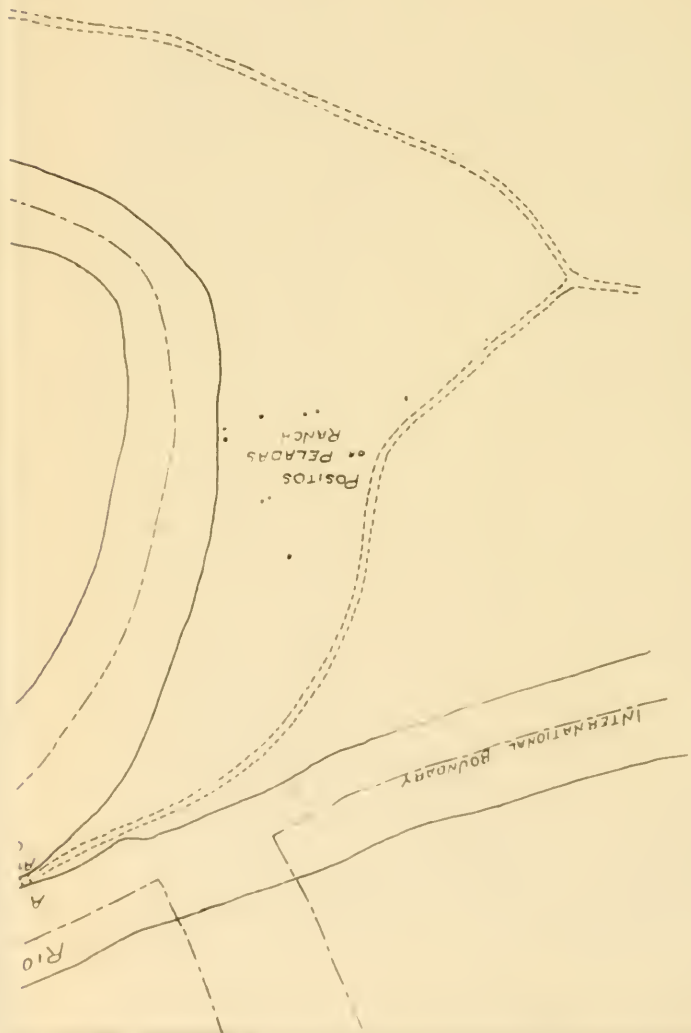


VILLARREALS BANCO

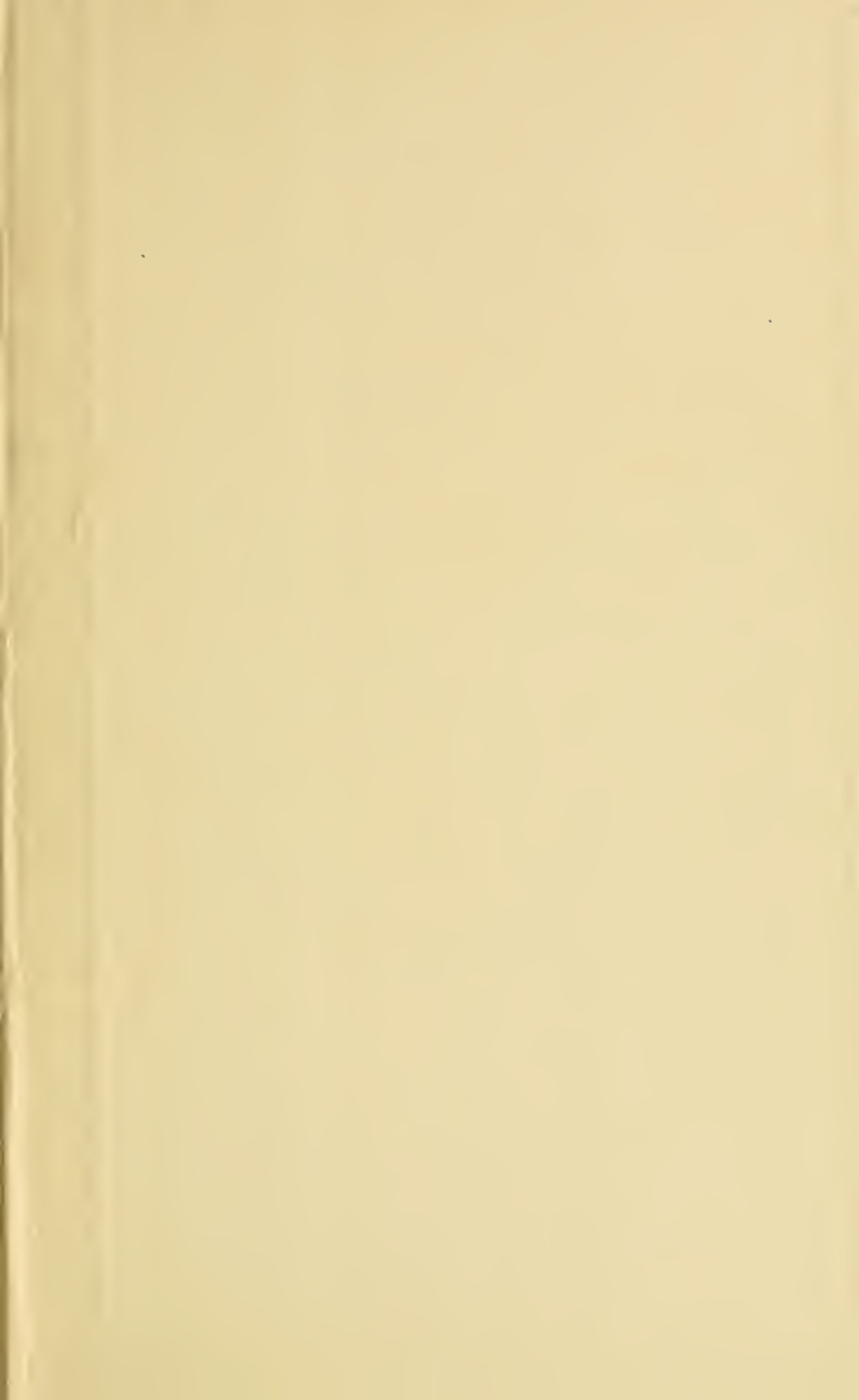
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